

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

(Filed: December 7, 2006)

DO NOT PUBLISH

WILLIAM LUCIO and CARLEEN LUCIO,
as parents of their son,
MICHAEL PATRICK LUCIO,

Petitioners,

v.

SECRETARY OF
HEALTH AND HUMAN SERVICES,

Respondent.

No. 04-1436V
Stipulation


DECISION DIRECTING ENTRY OF JUDGMENT¹

On December 5, 2006, the parties filed a stipulation. The special master has reviewed thoroughly the stipulation. He adopts completely the stipulation. Therefore, in the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment based upon the stipulation in petitioners' favor.²

¹ 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 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). Otherwise, "the entire decision" will be available to the public. *Id.*

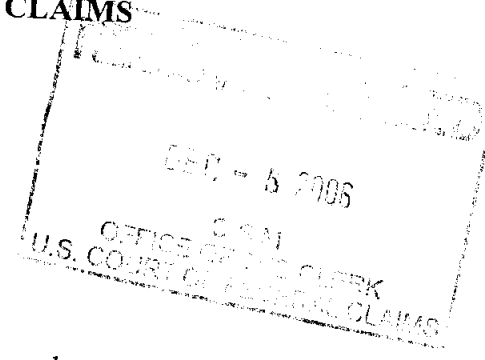
² Under Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review. Then, under Vaccine Rule 12(a), petitioners may expedite payment by filing an election to accept the judgment.

The clerk of court shall send petitioners' copy of this decision to petitioners by overnight express delivery.


John F. Edwards
Special Master

THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS



MICHAEL PATRICK LUCIO, by)
his parents CARLEEN LUCIO and)
WILLIAM LUCIO,)

Petitioners,)

v.)

SECRETARY OF HEALTH AND HUMAN)
SERVICES,)

Respondent.)

No. 04-1436V
Special Master Edwards

STIPULATION

It is hereby stipulated by and between the parties, the following matters:

1. On behalf of their son, Michael Patrick Lucio ("Michael"), petitioners filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 *et seq.* (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to Michael's receipt of the diphtheria-tetanus-acellular pertussis ("DTaP"), inactivated poliovirus ("IPV"), and pneumococcal conjugate ("Prevnar") immunizations, which vaccines are contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. Michael received his immunizations on October 7, 2003.
3. The vaccines were administered within the United States.
4. Petitioners allege that Michael suffered an acute encephalopathy, which was caused-in-fact by the DTaP, IPV, and/or Prevnar immunizations he received on October 7, 2003.
5. Petitioners represent that there has been no prior award or settlement of a civil action for damages on behalf of Michael as a result of his condition.

6. Respondent's Rule 4 Report denies that Michael's alleged acute encephalopathy was caused by his October 7, 2003 vaccinations.

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 \$38,949.68 in the form of a check payable jointly to petitioners and the Illinois Dept. of Health & Family Services, Bureau of Collections, Technical Recovery Section, 32 West Randolph - 13th Floor, Chicago, IL, Att. Pilar Perez-DeJesus. This amount represents reimbursement for the state's Medicaid lien;

b. An amount of \$300,000.00 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"). The amount described herein represents compensation for all remaining elements of compensation.

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 Michael Patrick Lucio, pursuant to which the

Life Insurance Company will agree to make payments periodically to Michael or his court appointed guardian/conservator if applicable, for the following items of compensation:

For all remaining elements of compensation under § 300aa-15(a), the following payments:

Beginning February 23, 2020, \$2,002.13 per month for 20 years certain and for life thereafter, increasing at three percent (3%), compounded annually from the date payments begin.

The purchase price of the annuity shall not exceed \$300,000.00. In the event that the cost of the annuity payments set forth above varies from \$300,000.00, the monthly payment beginning February 23, 2020, shall be adjusted to ensure that the total cost of the annuity is neither less nor greater than \$300,000.00. The period certain payments provided herein shall be made in monthly payments guaranteed for the 20 year period set forth above. Should Michael predecease the exhaustion of payments during this period, any remaining payments shall be made to his estate. However, petitioners shall provide written notice to the Secretary of Health and Human Services and to the Life Insurance Company within twenty (20) days of Michael Lucio'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 special master shall preside over further proceedings to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

13. Payments made pursuant to paragraph 8 and any amount 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.

14. The parties and their attorneys further agree and stipulate that the money provided pursuant to this Stipulation as part of the annuity contract will be used solely for the benefit of Michael 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).

15. In return for the payments described in paragraphs 8 and 12, petitioners, in their individual capacities and as legal representatives of Michael, on behalf of themselves, Michael, and Michael's heirs, executors, administrators, successors or assigns, do forever and fully expressly release, acquit and discharge the Secretary of Health and Human Services and the United States of America from any and all actions, causes of action, agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature on account of, or in any way growing out of, any and all known or unknown personal injuries to or death of Michael resulting from, or alleged to have resulted from, the DTaP, IPV and Prevnar vaccinations administered to him on October 7, 2003, as alleged by petitioners in a petition for vaccine compensation filed on September 13, 2004, in the United States Court of Federal Claims as petition No. 04-1436V.

16. If Michael should die prior to the Secretary making any or all of the payments described in paragraph 8, this agreement shall be considered voidable upon proper notice to the Court on behalf of either or both of the parties.

17. 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 null and void at the sole discretion of either party.

18. This Stipulation expresses a full and complete 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.

19. All rights and obligations of petitioners hereunder shall apply equally to their successors and assigns as legal representatives of Michael Patrick Lucio.

END OF STIPULATION

Respectfully submitted,

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CARLEEN LUCIO

PETITIONER:

William Lucio
WILLIAM LUCIO

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Dated: 12/7/2016