

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

(Filed: January 2, 2008)

DO NOT PUBLISH

JENNIFER PRESLEY,)	
as representative of her daughter,)	
DESTINY PRESLEY,)	
)	
Petitioner,)	
)	
v.)	No. 99-0730V
)	Stipulation
SECRETARY OF)	
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	

DECISION DIRECTING ENTRY OF JUDGMENT¹

On January 2, 2008, 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 petitioner’s favor. 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), petitioner may expedite payment by filing an election to accept the judgment.

s/John F. Edwards
John F. Edwards
Special Master

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.*

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

<hr/>)	
JENNIFER PRESLEY, as)		
Representative of Her Daughter,)		
DESTINY PRESLEY,)		
)		
Petitioner,)	No. 99-730V	
)	Special Master Edwards	
v.)		
)		
SECRETARY OF HEALTH AND HUMAN)		
SERVICES,)		
)		
Respondent.)		
<hr/>)	

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of her daughter, Destiny Presley ("Destiny"), petitioner 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 Destiny's receipt of the measles-mumps-rubella ("MMR") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 U.S.C. § 300aa-14(a)(III); 42 C.F.R. § 100.3 (a)(III).

2. Destiny received her MMR immunization on December 31, 1996.

3. The vaccine was administered within the United States.

4. Petitioner alleges that Destiny sustained the first symptom or manifestation of the onset of an encephalopathy within the time period set forth in the Table. She further alleges that she developed seizures, cerebral palsy, and developmental delays, as

sequelae of her Table injury.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of Destiny as a result of her condition.

6. Respondent denies that Destiny suffered the onset of an encephalopathy within the time period set forth in the Table, and denies that her current disabilities are sequelae of her alleged Table injury.

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 petitioner has 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 \$503,483.10, which amount represents compensation for first year post-judgment life care expenses (\$9,600.00), lost future earnings (\$311,182.07) and pain and suffering (\$182,701.03), in the form of a check payable to petitioner, as court-appointed guardian/conservator of the estate of Destiny Presley;

b. A lump sum of \$23,615.69, which amount represents compensation for reimbursement of the state's Medicaid lien, in the form of a check payable jointly to petitioner and the Commonwealth of Virginia; Department of Medical Assistance Services; 600 East Broad Street; Suite 3100; Richmond,

Virginia 23219; Attention: Donna Piacentini;

c. 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").

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 Destiny, pursuant to which the Life Insurance Company will agree to make payments periodically to the court-appointed guardian/conservator of Destiny Presley for the following items of compensation:

- a. For future unreimbursable medication expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$1,000.00 to be paid for the remainder of Destiny's life, increasing at the rate of five percent (5%), compounded annually from the date of judgment.
- b. For future unreimbursable OT/PT expenses, beginning on the first anniversary of the date of judgment, an annual amount of

\$3,600.00 to be paid up to the anniversary of the date of judgment in the year 2017, increasing at the rate of four percent (4%), compounded annually from the date of judgment.

c. For future unreimbursable tutoring expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$5,000.00 to be paid up to the anniversary of the date of judgment in the year 2017, increasing at the rate of four percent (4%), compounded annually from the date of judgment.

d. For future unreimbursable residential care expenses, on the anniversary of the date of judgment in the year 2017, a lump sum payment of \$85,364.00; thereafter, beginning on the anniversary of the date of judgment in the year 2018, an annual amount of \$32,664.00 to be paid for the remainder of Destiny's life, all amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment.

At the sole discretion of the Secretary of Health and Human Services, the periodic payments may be provided to petitioner in monthly, quarterly, annual or other installments. The "annual amounts" set forth above describe only the total yearly sum to be paid to petitioner and do not require that the payment be made in one annual installment. Petitioner will continue to receive the annuity payments from the Life Insurance Company only so long as Destiny is alive at the time that a particular payment is due. Petitioner shall provide written notice to the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of Destiny'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 petitioner has 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. 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.

14. 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 either immediately or as part of the annuity contract, will be used solely for the benefit of Destiny 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. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as guardian/conservator of Destiny's estate under the laws of the Commonwealth of Virginia. No payments pursuant to this Stipulation shall be made to petitioner until petitioner provides the Secretary with documentation establishing her appointment as guardian/conservator of Destiny's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian/conservator of the estate of Destiny Presley 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 Destiny Presley upon submission of written documentation of such appointment to the Secretary.

16. In return for the payments described in paragraphs 8 and 12, petitioner, in her individual capacity and as legal representative of Destiny, on behalf of herself, Destiny, and her heirs, executors, administrators, successors or assigns, does 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 Destiny resulting from, or alleged to have resulted from, the MMR vaccination administered on December 31, 1996, as alleged by petitioner in a petition for vaccine compensation filed on or about August 24, 1999, in the United States Court of Federal Claims as petition No. 99-730V.

17. If Destiny should die prior to petitioner receiving the payments described in paragraphs 8(a) and 8(b), this agreement shall be considered voidable upon proper notice to the Court on behalf of either or both of the parties.

18. 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.

19. 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.

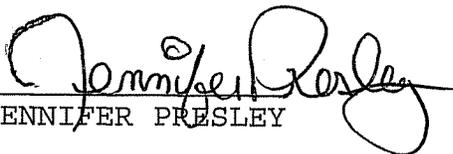
20. All rights and obligations of petitioner hereunder shall

apply equally to her successors and assigns as legal representatives of Destiny Presley.

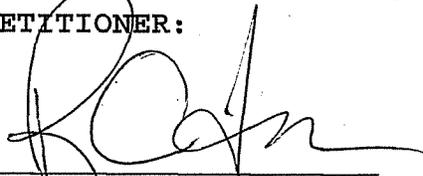
END OF STIPULATION

Respectfully submitted,

PETITIONER:


JENNIFER PRESLEY

ATTORNEY OF RECORD FOR
PETITIONER:


RONALD C. HOMER
Conway, Homer & Chin-Caplan, P.C.
16 Shawmut Street
Boston, MA 02116
(617) 695-1990

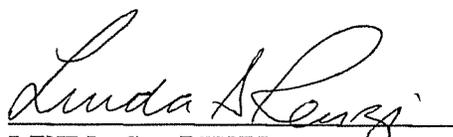
AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:

Mark W. Rogers
by *Vincent Matanowski*
MARK W. ROGERS
Deputy Director
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146

AUTHORIZED REPRESENTATIVE OF
THE SECRETARY OF HEALTH AND
HUMAN SERVICES:


GEOFFREY EVANS, M.D.
Director, Division of
Vaccine Injury Compensation
Healthcare Systems Bureau
U.S. Department of Health
and Human Services
5600 Fishers Lane
Parklawn Building, Stop 11C-26
Rockville, MD 20857

ATTORNEY OF RECORD FOR
RESPONDENT:


LINDA S. RENZI
Senior Trial Counsel
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
(202) 616-4133

Dated: January 2, 2008