

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

(Filed: January 22, 2007)

DO NOT PUBLISH

LIZ WARREN,	)	
as the legal representative of her minor son,	)	
MILO ZADA,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 05-1271V
	)	Stipulation
SECRETARY OF	)	
HEALTH AND HUMAN SERVICES,	)	
	)	
Respondent.	)	

### DECISION DIRECTING ENTRY OF JUDGMENT<sup>1</sup>

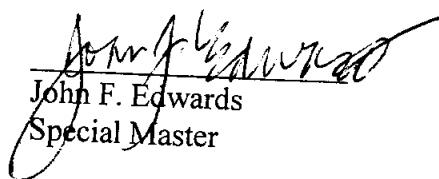
On January 18, 2007, the parties filed a stipulation. The special master has reviewed thoroughly the stipulation. He adopts completely the stipulation. Therefore, in the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment based upon the stipulation in petitioner's favor.<sup>2</sup>

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<sup>1</sup> 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.*

<sup>2</sup> 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.

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

  
John F. Edwards  
Special Master

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

\_\_\_\_\_  
LIZ WARREN, as the Legal )  
Representative of her minor son, )  
Milo Zada, )  
 )  
Petitioner, )  
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v. )  
 )  
SECRETARY OF HEALTH AND HUMAN )  
SERVICES, )  
 )  
Respondent. )  
\_\_\_\_\_ )

JAN 18 2007  
CLERK  
OFFICE OF THE CLERK  
U.S. COURT OF FEDERAL CLAIMS

No. 05-1271V  
Special Master Edwards

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of her son, Milo Zada ("Milo"), 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 Milo's receipt of the Diphtheria-Tetanus-acellular Pertussis (DTaP) vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 U.S.C. § 100.3(a)(III).
2. Milo received his DTaP immunization on May 29, 2003.
3. The vaccine was administered within the United States.
4. Petitioner alleges that Milo 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 he

suffers from profound developmental delays as sequelae of his Table injury.

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

6. Respondent denies that Milo suffered the onset of an encephalopathy within the time period set forth in the Table, and denies that his current developmental delays are sequelae of his 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 \$800,000.00 in the form of a check payable to petitioner, as guardian/conservator of Milo's estate. This amount represents compensation for damages available under 42 U.S.C. §300aa-15(a)(1), (3) and (4); and

b. An amount of \$200,000.00 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").

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 Milo, pursuant to which the Life Insurance Company will agree to make payments periodically to petitioner for the following items of compensation:

- a. For future un-reimbursable vaccine-related expenses, beginning on March 27, 2007 an amount of \$1,328.36 per month, guaranteed for a period of 216 months certain.

The purchase price of the annuity shall not exceed \$200,000.00.

In the event that the cost of the annuity payments set forth above varies from \$200,000.00, the monthly payment amount listed above shall be adjusted to ensure that the total cost of the annuity is neither less nor greater than \$200,000.00. The periodic payments provided herein shall be made in monthly payments, guaranteed to Milo for the period set forth above.

Should Milo predecease the exhaustion of payments during the 216 month certain period set forth above, any remaining payments shall be made to his estate. However, petitioner shall provide written notice to the Secretary of Health and Human Services and to the Life Insurance Company within twenty (20) days of Milo Zada'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 Milo 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 Milo's estate under the laws of the State of California. No payments pursuant to paragraph 8(a) of this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as guardian/conservator of Milo's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as the guardian of the estate of Milo Zada, any payment under this Stipulation shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as guardian of the

estate of Milo Zada 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 Milo, on behalf of herself, Milo, and his 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 Milo resulting from, or alleged to have resulted from, the DTaP vaccination administered on May 29, 2003 as alleged by petitioner in a petition for vaccine compensation filed on or about December 8, 2005, in the United States Court of Federal Claims as petition No. 05-1271V.

17. If Milo should die prior to receiving the payment described in paragraph 8(a), 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 in the event 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 Milo Zada.

END OF STIPULATION

Respectfully submitted,

PETITIONER:

  
LIZ WARREN

ATTORNEY OF RECORD FOR  
PETITIONER:



CURTIS R. WEBB  
WEBB, WEBB & GUERRY  
Attorneys at Law  
155 2<sup>nd</sup> Avenue North  
P.O. Box 1768  
Twin Falls, ID 83303-1768  
(208) 734-1616

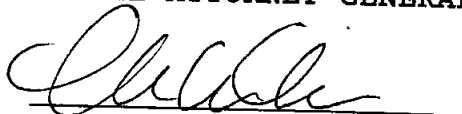
AUTHORIZED REPRESENTATIVE OF  
THE SECRETARY OF HEALTH AND  
HUMAN SERVICES:



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

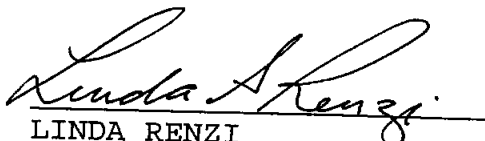
Dated: JANUARY 18, 2007

AUTHORIZED REPRESENTATIVE  
OF THE ATTORNEY GENERAL:



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

ATTORNEY OF RECORD FOR  
RESPONDENT:



LINDA 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