

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

(Filed: June 22, 2006)

DO NOT PUBLISH

JESSICA WHITT,)	
as the legal representative of her minor son,)	
BENJAMIN GEORGE,)	
)	
Petitioner,)	
)	
v.)	No. 04-0770V
)	Stipulation
SECRETARY OF)	
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	

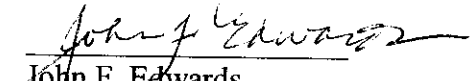
DECISION DIRECTING ENTRY OF JUDGMENT¹

On June 20, 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 petitioner's favor.² *The judgment shall reflect that, as provided in paragraph 15 of the stipulation, the lump sum mandated by paragraph 8(a) of the stipulation shall be payable to Troy Reed, as guardian/conservator of the estate of Benjamin S. George under the laws of the State of Ohio, for the benefit of Benjamin S. George as opposed to petitioner, as guardian/conservator of the estate of Benjamin S. George.*

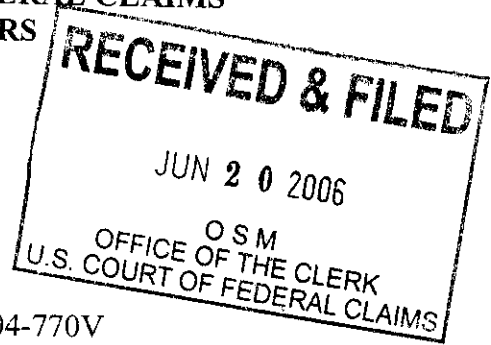
¹ As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of 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), 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 SPECIAL MASTERS



_____)
JESSICA WHITT, as mother and next friend of)
BENJAMIN GEORGE, a minor,)
)
Petitioner,)
)
v.)
)
SECRETARY OF HEALTH AND)
HUMAN SERVICES,)
)
Respondent.)
_____)

No. 04-770V
Special Master John Edwards

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of her son, Benjamin George ("Benjamin"), petitioner filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa10 *et seq.* (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to Benjamin'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)(I); 42 C.F.R. § 100.3(a)(I).
2. Benjamin received his MMR immunization on January 30, 2002.
3. The vaccine was administered within the United States.
4. Petitioner alleges that Benjamin sustained the first symptom or manifestation of the onset of Immune Thrombocytopenia Purpura (ITP) within the time period set forth in the Table.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of Benjamin as a result of his condition.

6. Respondent denies that petitioner meets the criteria for compensation under the Act because the onset of symptoms falls outside the time period set forth in the Table.

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 \$20,000.00 payable to petitioner, as guardian/conservator of Benjamin's estate, which represents compensation for past pain and suffering;
- b. A lump sum payment of \$13,413.99 in the form of a check payable jointly to petitioner and Treasurer, State of Ohio, Ohio Tort Recovery, P.O. Box 151161, Columbus, Ohio, 43215, ATTN: Lashone Stepney, in satisfaction of the State of Ohio's Medicaid expenses;
- c. A lump sum of \$40,000.00 to purchase the annuity 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 Benjamin, at a cost of \$40,000.00, pursuant to which the Life Insurance Company will agree to make payments periodically to Benjamin as follows:

For future unreimbursed medical expenses and future pain and suffering, beginning on January 29, 2019, a lump sum of \$14,265.34 to be paid annually on January 29 each year through the year 2024.

The purchase price of the annuity shall not exceed \$40,000.00. The lump sum amounts set forth above represent an estimate of the annuity stream that can be purchased for \$40,000.00 as of April 2006. In the event that the cost of the annuity payments set forth above varies from \$40,000.00 due to market rate fluctuations, the lump sum payments listed above shall be adjusted to ensure that the total cost of the annuity at the time it is purchased is neither greater nor less than \$40,000.00. Benjamin will receive the six annuity payments from the Life Insurance Company for the guaranteed period indicated above. Payments shall be made payable to Benjamin George. Should Benjamin pre-decease the exhaustion of payments described above, any remaining payments shall be made payable to the estate of Benjamin George. However, petitioner shall provide written notice to the Secretary of Health and Human Services and the Life Insurance Company within 20 days of Benjamin's death.

11. The annuity contract described in paragraph 10 above 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 do not guarantee or insure any of the future annuity payments. Upon the purchase of the annuity contract pursuant to which the Life Insurance Company will make periodic payments described in paragraph 10, the Secretary of Health and Human Services and the United States of America are released from any and all obligations with respect to these 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 of this Stipulation 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 to the State of Ohio for reimbursement of Medicaid expenses and any award for attorneys' fees, the money provided pursuant to this Stipulation either immediately or as part of the annuity contract, will be used solely for the benefit of Benjamin 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 Troy Reed has been duly authorized to serve as guardian/conservator of the Estate of Benjamin S. George under the laws of the State of Ohio. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing Mr. Reed's appointment as guardian/conservator of Benjamin's estate. If Mr. Reed is not authorized by a court of competent jurisdiction to act as guardian/conservator of the estate of Benjamin at the time any payments pursuant to this Stipulation are due, any such payments shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as the guardian/conservator of the Estate of Benjamin upon submission of written documentation 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 Benjamin, on behalf of herself, Benjamin, 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 Benjamin resulting from, or alleged to have resulted from, the MMR vaccination administered on January 30, 2002, as alleged by petitioner in a petition for vaccine compensation filed on or about April 4, 2004, in the United States Court of Federal Claims as petition No. 04-770V.

17. If Benjamin should die prior to the Secretary making any or all of the payments described in paragraph 10, 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 that includes completely the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with that decision, then the parties' settlement and this Stipulation shall be null and void at the sole discretion of either party.

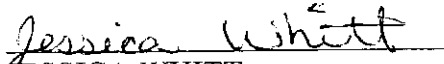
19. This Stipulation expresses a full and complete settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 12 above. There is absolutely no agreement on the part of the parties hereto to make any payment or 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 Benjamin George.


END OF STIPULATION

Respectfully submitted,

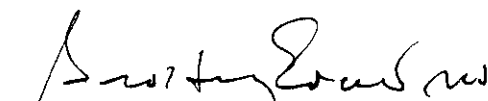
PETITIONERS:


JESSICA WHITT

**ATTORNEY OF RECORD FOR
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**AUTHORIZED REPRESENTATIVE OF
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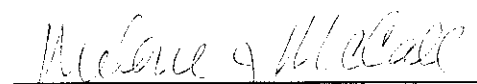

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Acting Director, Division of
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Dated: 6/20/06

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