

**In the United States Court of Federal Claims**  
**OFFICE OF SPECIAL MASTERS**

No. 08-150V  
Filed: January 9, 2012  
Unpublished

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LYNDON GORNEY, a deceased minor,  
by Next Friends, LISA AND KENNETH  
GORNEY,

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Petitioners,

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v.

SECRETARY OF THE DEPARTMENT  
OF HEALTH AND HUMAN SERVICES,

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Respondent.

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Stipulation; Diphtheria-tetanus-  
acellular pertussis, DTaP; Encephalopathy;  
Table injury; Sequelae including seizures, developmental delay, visual disturbances, muscle and motor involvement, and death

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*Scott W. Rooney, Nemes Rooney and McKindles, Farmington Hills, MI, for Petitioners.  
Ann Donohue Martin, U.S. Department of Justice, Washington, D.C., for Respondent.*

**DECISION**<sup>1</sup>

GOLKIEWICZ, Special Master.

On January 6, 2012, the parties to the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Petitioners allege that their son suffered a Vaccine Table encephalopathy, with sequelae including seizures and death, as a consequence of the first and second DTaP vaccines their son received. Petitioners further allege that their son experienced the residual effects of the Table encephalopathy for more than six months. Respondent denies that petitioners' son "suffered the onset of an encephalopathy within the time period set forth in the Table; denies that his vaccines caused him to suffer any injury or disability; denies that his disabilities were sequelae of his alleged injury; and denies that [petitioners' son's] death was the result of his vaccines." Nonetheless, the parties agreed informally to resolve this matter. Stipulation, filed January 6, 2012.

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<sup>1</sup> The undersigned intends to post this decision on the website for the United States Court of Federal Claims, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). 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). Otherwise, the entire decision will be available to the public. *Id.* Any motion for redaction must be filed by no later than fourteen (14) days after filing date of this filing. Further, consistent with the statutory requirement, a motion for redaction must include a proposed redacted decision, order, ruling, etc.

The court hereby **ADOPTS** the parties' said Stipulation, attached hereto, and awards compensation in the amount and on the terms set forth therein. **Specifically, petitioners are awarded a lump sum of \$10,000.00 in the form of a check payable to petitioners as conservators of their son's estate; petitioners are also awarded a lump sum of \$5,829.00 in the form of a check payable to petitioners and petitioners' attorney for attorney fees and costs.**<sup>2</sup> See Stipulation, ¶ 8, filed January 6, 2012.

The Clerk of the Court is directed to enter judgment accordingly.

**IT IS SO ORDERED.<sup>3</sup>**

s/ Gary J. Golkiewicz  
Gary J. Golkiewicz  
Special Master

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<sup>2</sup> In compliance with General Order #9, the Stipulation states that petitioners incurred no out-of-pocket expenses in proceeding on the Petition. Stipulation at ¶ 8(b).

<sup>3</sup> This document constitutes a final "decision" in this case pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). Unless a motion for review of this decision is filed within 30 days, the Clerk of the Court shall enter judgment in accord with this decision. Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.

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

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LYNDON GORNEY, a deceased minor, by )  
Next Friends, LISA AND KENNETH )  
GORNEY, )  
Petitioners, )  
v. ) No. 08-150V  
SECRETARY OF HEALTH AND ) Special Master Golkeiwicz  
HUMAN SERVICES, ) ECF  
Respondent. )  
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)

**STIPULATION**

The parties hereby stipulate to the following matters:

1. Lisa and Kenneth Gorney (“petitioners”), as parents and next friends of their son, Lyndon Gorney (“Lyndon”), now deceased, 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 to Lyndon Gorney that petitioners allege were caused by receipt of diphtheria-tetanus-acellular pertussis (“DTaP”) vaccines, which vaccines are contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3(a).
2. Lyndon received DTaP, inactivated polio virus (“IPV”), hemophilus influenza type b polysaccharide conjugate (“Hib”), pneumococcal conjugate, and Hepatitis B vaccines on March 15, 2005. Lyndon also received DTaP, Hib, IPV, and pneumococcal conjugate vaccines on May 18, 2005, and he received DTaP, Hib, and pneumococcal conjugate vaccines on July 22, 2005.
3. The vaccines were administered within the United States.
4. Petitioners allege that following Lyndon’s first and second DTaP vaccines, Lyndon

sustained the first symptom or manifestation of the onset of an encephalopathy within the time period of the Table. They also allege that as sequelae of his Table injury, Lyndon developed seizures, global developmental delay, muscle weakness, and other physical injuries, as well as disabilities in his vision and motor skills. Petitioners further allege that Lyndon experienced the residual effects of his injury for more than six months. In addition, petitioners allege that his death, on November 15, 2010, was the result of his first and second DTaP vaccines.

5. Petitioners represent that there has been no prior award or settlement of a civil action for damages on behalf of Lyndon, as a result of his injuries or his death.

6. Respondent denies that Lyndon suffered the onset of an encephalopathy within the time period set forth in the Table; denies that his vaccines caused him to suffer any injury or disability; denies that his disabilities were sequelae of his alleged injury; and denies that Lyndon's death was the result of his vaccines.

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 \$10,000.00 in the form of a check payable to petitioners as conservators of Lyndon'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 \$5,829.00 in the form of a check payable to petitioners and petitioners' attorney, Scott W. Rooney, 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. § 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 Lyndon's estate under the laws of the State of Michigan.

12. In return for the payments described in paragraph 8, petitioners, in their individual capacities and as legal representatives of Lyndon Gorney's estate, on behalf of themselves and Lyndon'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 Lyndon resulting from, or alleged to have resulted from, the vaccines administered to Lyndon on March 15, 2005, May 18, 2005, and July 22, 2005, as alleged by petitioners in a petition for vaccine compensation filed on or about March 11, 2008, in the United States Court of Federal Claims as petition No. 08-150V.

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 Lyndon suffered the onset of an encephalopathy within the time period set forth in the Table; that his disabilities were sequelae of his alleged Table injury; that his vaccines caused an encephalopathy or caused him to suffer any disabilities; or that Lyndon's death was the result of his vaccines.

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

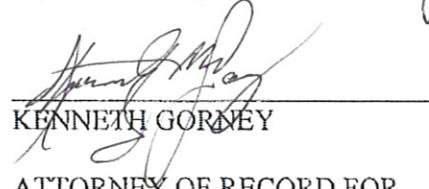
Gorney's estate.

## END OF STIPULATION

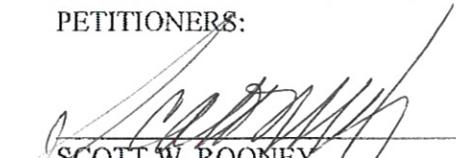
Respectfully submitted,

PETITIONERS:

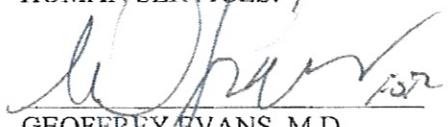
  
Lisa Gorney  
LISA GORNEY

  
KENNETH GORNEY

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Dated: January 6, 2012

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