

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

No. 08-258V
Filed: August 26, 2011
Unpublished

MERRICK LINDSEY, by and through	*	
KIMBERLY LINDSEY,	*	
as parent and natural guardian,	*	
	*	Stipulation; Acute liver failure
	*	
Petitioner,	*	
	*	
v.	*	
	*	
SECRETARY OF THE DEPARTMENT	*	
OF HEALTH AND HUMAN SERVICES,	*	
	*	
Respondent.	*	

Anne Carrion Toale, Maglio, Christopher and Toale, Sarasota, FL., for Petitioner.
Darryl R. Wishard, U.S. Department of Justice, Washington, D.C., for Respondent.

DECISION¹

GOLKIEWICZ, Special Master.

On August 26, 2011, the parties to the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Petitioner alleges that her son suffered acute liver failure, requiring a liver transplant, as a consequence of the MMR and Varicella vaccines he received on September 27, 2005. Petitioner further alleges that her son experienced the residual effects of the injury for more than six months. Respondent denies that the vaccines caused or significantly aggravated petitioner’s son’s acute liver failure, requiring a liver transplant, or any other injury, and denies that he

¹ 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.**

experienced residual effects of the alleged injury for more than six months. Nonetheless, the parties agreed informally to resolve this matter. Stipulation, filed August 26, 2011.

The court hereby **ADOPTS** the parties' said Stipulation, attached hereto, and awards compensation in the amount and on the terms set forth therein. **Specifically, petitioner is awarded (a) a lump sum of \$15,000.00 in the form of a check payable to petitioner as guardian/conservator of the estate of Merrick Lindsey; (b) a lump sum of \$1,501.63 in the form of a check payable jointly to petitioner and Kansas Health Policy Authority, Legal Section, Landon State Office Building, 900 SW Jackson Street, Room 900-N, Topeka, KS 66612-1220, Attn: Robert R. Hiller, Jr.; (c) a lump sum of \$357.47 in the form of a check payable jointly to petitioner and MO Healthnet Division, Cost Recovery Unit, PO Box 6500, Jefferson City, MO 65102-6500, Attn: Cost Recovery Unity; and (d) a lump sum of \$51,187.95 in the form of a check payable jointly to petitioner and Agency for Health Care Administration, State of Florida Medicaid Third Party Liability, ACS Recovery Service, PO Box 12188, Tallahassee, FL 32317-2188, Attn: Nika Ervin. See Stipulation, ¶ 8.**

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

IT IS SO ORDERED.²

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

² 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

_____)	
MERRICK LINDSEY,)	
by and through KIMBERLY LINDSEY,)	
as parent and natural guardian,)	
)	
Petitioner,)	
v.)	No. 08-258V ECF
)	Special Master Golkiewicz
SECRETARY OF HEALTH AND)	
HUMAN SERVICES)	
)	
Respondent.)	
_____)	

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of her son, Merrick Lindsey ("Merrick"), 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 Merrick's receipt of the Measles-Mumps-Rubella ("MMR") and Varicella vaccines, which vaccines are contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Merrick received his vaccinations on or about September 27, 2005.
3. The vaccines were administered within the United States.
4. Petitioner alleges that Merrick sustained acute liver failure requiring a liver transplant as a result of receiving the vaccinations, and that Merrick experienced residual effects of this injury for more than six months.
5. Petitioner represents that there has been no prior award or settlement of a civil action

for damages on behalf of Merrick as a result of his condition.

6. Respondent denies that the vaccines either caused or significantly aggravated Merrick's acute liver failure requiring a liver transplant, or any other injury, and denies that Merrick experienced the residual effects of his alleged injury for more than six months.

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 \$15,000.00, in the form of a check payable to petitioner as guardian/conservator of the estate of Merrick Lindsey;
- b. A lump sum of \$1,501.63, which amount represents reimbursement of a State of Kansas Medicaid lien, in the form of a check payable jointly to petitioner and

Kansas Health Policy Authority
Legal Section
Landon State Office Building
900 SW Jackson Street, Room 900-N
Topeka, KS 66612-1220
Attn: Robert R. Hiller, Jr.;

- c. A lump sum of \$357.47, which amount represents reimbursement of a State of Missouri Medicaid lien, in the form of a check payable jointly to petitioner and

MO Healthnet Division
Cost Recovery Unit
P.O. Box 6500
Jefferson City, MO 65102-6500
Attn: Cost Recovery Unit; and

d. A lump sum of \$51,187.95, which amount represents reimbursement of a State of Florida Medicaid lien, in the form of a check payable jointly to petitioner and

Agency for Health Care Administration
State of Florida Medicaid Third Party Liability
ACS Recovery Service
P.O. Box 12188
Tallahassee, FL 32317-2188
Attn: Nika Ervin

These amounts represent compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a). Petitioner agrees to endorse the payments identified in paragraphs 8.b, 8.c, and 8.d to the States of Kansas, Missouri, and Florida respectively.

9. 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.

10. Petitioner and her 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. § 300aa-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.

11. Payments made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 9 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs, and past unreimbursable expenses, the money provided pursuant to this Stipulation will be used solely for the benefit of Merrick 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).

13. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as guardian of Merrick's estate under the laws of the State of Kansas. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as guardian of Merrick's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian of the estate of Merrick Lindsey at the time a payment pursuant to this Stipulation is to be made, any such payments shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as guardian of the estate of Merrick Lindsey upon submission of written documentation of such appointment to the Secretary.

14. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity and as legal representative of Merrick, on behalf of herself, Merrick, and his heirs, executors, administrators, successors or assigns, does 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 Merrick resulting from, or alleged to have resulted from, the MMR and Varicella vaccinations administered on or about September 27, 2005, as alleged by petitioner in a petition for vaccine compensation filed on or about April 9, 2008, in the United States Court of Federal Claims as petition No. 08-258V.

15. If Merrick should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

16. 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.

17. 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, except as otherwise noted in paragraph 9 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. 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, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

18. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the vaccine caused Merrick's acute liver failure requiring a liver transplant or any current disabilities, or that Merrick experienced the residual

effects of this injury for more than six months.

19. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns as legal representatives of Merrick Lindsey.

END OF STIPULATION

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Respectfully submitted,

PETITIONER:


KIMBERLY LINDSEY

**ATTORNEY OF RECORD FOR
PETITIONER:**



ANNE C. TOALE
MAGLIO CHRISTOPHER & TOALE
1751 Mound St., Second Floor
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(941) 952-5242

**AUTHORIZED REPRESENTATIVE
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Dated: 8/26/11