

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. [REDACTED]V

Filed: January 22, 2010

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CHILD DOE/58, a Minor, by his  
Parents and Natural Guardians, JOHN  
and JANE DOE/58,

Petitioners,

v.

SECRETARY OF  
OF HEALTH AND HUMAN SERVICES,

Respondent.

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Stipulation; Hepatitis B; Systemic  
Onset Juvenile Rheumatoid Arthritis

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### DECISION<sup>1</sup>

GOLKIEWICZ, Chief Special Master.

On January 21, 2010, the parties to the above-captioned case filed a Stipulation, attached hereto, memorializing their agreement as to the appropriate amount of compensation in this case. Petitioners allege their son, Child Doe/58, suffered an injury, systemic onset juvenile rheumatoid arthritis (“sJRA”) and other subsequent sequelae, related to his receipt of hepatitis B vaccines on September 17, 1996 and October 15, 1996. Respondent denies Child Doe/58 suffered the onset of sJRA as a result of his hepatitis B vaccinations and denies that his current disabilities are the result of his alleged vaccine injury. Nonetheless, the parties agreed informally to resolve this matter.

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 \$200,000.00 in the form of a check payable to Child Doe/58, on or after April**

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<sup>1</sup> The undersigned intends to post this decision on the United States Court of Federal Claims’s website, 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.

**16, 2010**; petitioners are also awarded a **lump sum of \$99,754.82 in the form of a check payable jointly to petitioners and Missouri Department of Social Services**, in satisfaction of the State of Missouri Medicaid lien; and finally, petitioners are awarded a **lump sum of \$500,000.00 to purchase the annuity contract as described within the Stipulation, see below**. Stipulation, para. 8-11. Regarding the annuity, the Secretary of Health and Human Services agrees to purchase the annuity contract at the cost of \$500,000.00 for the benefit of Child Doe/58, pursuant to which periodic payments will be made to Child Doe/58, for future vaccine-related expenses, lost future earnings and pain and suffering, as follows:

**Beginning six (6) months from the date of purchase of the annuity, \$1,295.09 payable monthly for life, guaranteed for 30 years (360 payments guaranteed). The monthly benefit shall compound at 2.5% annually from the date of first payment. No annuity payments shall be made to [Child Doe/58] before April 16, 2010.**

See Stipulation, para. 8c, para 10.

The Clerk of the Court is directed to enter judgment accordingly.<sup>2</sup>

**IT IS SO ORDERED.**

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

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<sup>2</sup>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

|                                      |   |                      |
|--------------------------------------|---|----------------------|
| ██████████, a Minor,                 | ) |                      |
| by his Parents and Natural           | ) |                      |
| Guardians, ██████████ and ██████████ | ) |                      |
| ██████████,                          | ) |                      |
|                                      | ) |                      |
| Petitioners,                         | ) |                      |
|                                      | ) |                      |
| v.                                   | ) | No. ██████████ V     |
|                                      | ) | Chief Special Master |
| SECRETARY OF HEALTH AND HUMAN        | ) | Golkiewicz           |
| SERVICES,                            | ) |                      |
|                                      | ) |                      |
| Respondent.                          | ) |                      |
|                                      | ) |                      |

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of their son, ██████████ ("██████████"), petitioners 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 ██████████'s receipt of hepatitis B vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. ██████████ received his hepatitis B vaccinations on September 17, 1996, and October 15, 1996.
3. The vaccines were administered within the United States.
4. Petitioners allege that ██████████ sustained the first symptom or manifestation of the onset of systemic onset juvenile rheumatoid arthritis ("sJRA") on October 26, 1996, which was caused by the hepatitis B vaccine. They further allege that he developed muscle aches, rashes, fatigue, joint pain, swelling and stiffness as sequelae of his alleged vaccine-related injury.

5. Petitioners represent that there has been no prior award or settlement of a civil action for damages on behalf of [REDACTED] as a result of his condition.

6. Respondent denies that [REDACTED] suffered the onset of sJRA as the result of his hepatitis B vaccinations and denies that his current disabilities are the result of his alleged vaccine 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 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 \$200,000.00 in the form of a check payable to [REDACTED] on or after April 16, 2010;<sup>1</sup> and
- b. A lump sum of \$99,754.82 payable jointly to petitioners and Missouri Department of Social Services in satisfaction of the State of Missouri Medicaid lien; and,
- c. A lump sum of \$500,000.00 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").

The above amounts represent compensation for all damages that would be available under 42 U.S.C. §300aa-15(a).

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<sup>1</sup> [REDACTED] s date of birth is April 16, 1992.

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 at a cost of \$500,000.00 for the benefit of [REDACTED], pursuant to which the Life Insurance Company will agree to make payments periodically to [REDACTED] for future vaccine-related expenses, lost future earnings and pain and suffering as follows:

- a. Beginning six (6) months from the date of purchase of the annuity, \$1,295.09 payable monthly for life, guaranteed for 30 years (360 payments guaranteed). The monthly benefit shall compound at 2.5% annually from the date of first payment. No annuity payments shall be made to [REDACTED] before April 16, 2010.

The purchase price of the annuity shall not exceed \$500,000.00.

The above monthly payments represent an estimate of the annuity stream that could be purchased for \$500,000.00. In the event that the cost of the annuity payments set forth above varies from \$500,000.00 due to market rate fluctuations on the date the annuity is purchased, the payments described above in paragraph 10(a) shall

be adjusted downward or upward accordingly to ensure that the total cost of the annuity will not be greater than or less than \$500,000.00.

The monthly payments in paragraph 10(a) to [REDACTED] are guaranteed for thirty (30) years (360 payments). Payments will continue to [REDACTED] so long as he is alive at the time a particular payment is due. Should [REDACTED] predecease the exhaustion of payments during the guarantee period described above, any remaining payments shall be made payable to the Estate of [REDACTED]. The personal representative of the Estate of [REDACTED] shall provide written notice to the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of petitioner'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 petitioners have 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, and past unreimbursable expenses, the money provided pursuant to this Stipulation, either immediately or as part of the annuity contract, will be used solely for the benefit of [REDACTED] 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. In return for the payments described in paragraphs 8 and 12, petitioners, in their individual capacities and as legal representatives of [REDACTED], and on behalf of themselves, [REDACTED], and [REDACTED]'s heirs, executors, administrators, successors or assigns, do 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 [REDACTED] resulting from, or alleged to have resulted from, the hepatitis B vaccines administered on September 17, 1996 and October 15, 1996, as alleged by petitioners in a petition for vaccine compensation filed on July 26, 1999, in the United States Court of Federal Claims as petition No. 99-504V.

16. If [REDACTED] should die prior to receiving the payments described in paragraph 8, this agreement shall be considered voidable upon proper notice to the Court on behalf of either or both of the parties.

17. 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.

18. 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.

