

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

No. [Redacted]V
Redaction filed: September 23, 2010
Originally filed: September 22, 2010
Unpublished Opinion

CHILD DOE/87, by and through	*	
JOHN and JANE DOE/87, as	*	
parents and natural guardians,	*	
	*	Decision on stipulation; Diphtheria,
Petitioners,	*	tetanus, acellular pertussis, DTaP;
	*	Measles, mumps and rubella, MMR;
v.	*	Hepatitis A; Acute allergic reaction;
	*	Gastrointestinal and behavioral
SECRETARY OF THE DEPARTMENT	*	symptoms
OF HEALTH AND HUMAN SERVICES,	*	
	*	
Respondent.	*	

DECISION¹

On September 22, 2010, the parties to the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. On March 14, 2005, Child Doe/87 received DTaP, MMR and Hepatitis A vaccinations. Petitioners allege that Child Doe/87 suffered an acute allergic reaction immediately after receipt of the vaccinations and developed gastrointestinal and behavioral symptoms as a consequence of these vaccinations. Petitioners further allege that Child Doe/87 experienced residual effects of these injuries for more than six months. Respondent denies that the vaccines caused Child Doe/87 to suffer from any gastrointestinal or behavioral symptoms and denies Child Doe/87 experienced the residual effects of the alleged injuries for more than six months. 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. Petitioners are awarded a lump sum of \$75,000 in the form of two checks. **Specifically, petitioners are awarded a lump sum**

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.

of \$15,000.00 in the form of a check payable to petitioners for past unreimbursable expenses paid by them on behalf of Child Doe/87; petitioners are also awarded a second lump sum of \$60,000 in the form of a check payable to petitioners, as guardians/conservators of Child Doe/87's estate. See Stipulation, ¶ 8, filed September 22, 2010.

The Clerk of the Court is directed to enter judgment accordingly.²

IT IS SO ORDERED.

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

² 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.

6. Respondent denies that the vaccines caused [REDACTED] to suffer from any gastrointestinal or behavioral symptoms, and denies [REDACTED] experienced the residual effects of the alleged injuries 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 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 lump sum of \$75,000.00, in the form of two checks. The first check, in the amount of \$15,000.00, shall be payable to petitioners for past unreimbursable expenses paid by them on behalf of [REDACTED]. The second check, in the amount of \$60,000.00, shall be payable to petitioners, as guardians/conservators of [REDACTED]'s estate. These amounts represent compensation for all damages that would be available under 42 U.S.C. §300aa-15(a).

9. 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.

10. Petitioners and their attorney represent that they have identified to respondent all known sources of payment for items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), including 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 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, litigation costs, and past unreimbursable expenses, the money provided pursuant to this Stipulation 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).

13. Petitioners represent that they presently are, or within 90 days of the date of judgment will become, duly authorized to serve as guardians/conservators of [REDACTED]'s estate under the laws of the State of Nevada. No payments pursuant to this Stipulation shall be made until petitioners provide the Secretary with documentation establishing their appointment as guardians/conservators of [REDACTED]'s estate. If petitioners are not authorized by a court of competent jurisdiction to serve as guardians/conservators of the estate of [REDACTED] at the time a payment pursuant to this Stipulation is to be made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as guardian/conservator of the estate of [REDACTED] upon submission of written documentation of such appointment to the Secretary.

14. In return for the payments described in paragraph 8, petitioners, in their individual capacity and as legal representatives of [REDACTED], on behalf of themselves, [REDACTED], and his 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, 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. § 300 aa-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 ██████ resulting from, or alleged to have resulted from, the vaccinations administered on March 14, 2005, as alleged by petitioners in a petition for vaccine compensation filed on or about March 12, 2008, in the United States Court of Federal Claims as petition No. ██████ V.

15. If ██████ should die prior to entry of the 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. Petitioners hereby authorize the respondent to disclose documents filed by petitioners in this case consistent with the Privacy Act and the routine uses described in the National Vaccine Injury Compensation Program System of Records, No. 09-15-0056.

19. 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 [REDACTED]'s gastrointestinal or behavioral symptoms, or that [REDACTED] experienced the residual effects of these injuries for more than six months.

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

[REDACTED]

END OF STIPULATION

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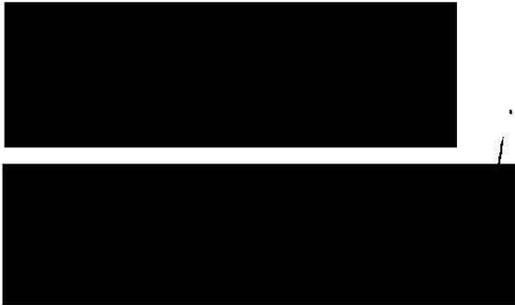
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Respectfully submitted,

PETITIONERS:



**ATTORNEY OF RECORD FOR
PETITIONER:**

Handwritten signature of Anne C. Toale in black ink.

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**AUTHORIZED REPRESENTATIVE
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Dated: 9/22/10