

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 08-897V

Filed: September 10, 2010

Unpublished

WILLIAM FEDORKA and	*
JODIE FEDORKA, legal representatives of	*
minor child, ABAGAIL FEDORKA,	*
	*
Petitioners,	*
	*
v.	*
	*
SECRETARY OF THE DEPARTMENT	*
OF HEALTH AND HUMAN SERVICES,	*
	*
Respondent.	*
	*

DECISION¹

On September 10, 2010, 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 daughter, Ababail, suffered intussusception of the small bowel thirty-eight days after receiving a Rotateq vaccination on September 21, 2007; and that her intussusception was caused-in-fact by the receipt of the Rotateq vaccine. Respondent denies that Abagail's intussusception was caused-in-fact by the Rotateq vaccine. 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 \$3,300.00 in the form of a check payable to petitioners, as Abagail's legal representatives.** See Stipulation, ¶ 8, filed September 10, 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

¹The 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.*

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.

THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS

WILLIAM and JODIE FEDORKA,)	
Legal Representatives of minor child,)	
ABAGAIL FEDORKA,)	<u>ECF</u>
)	
Petitioners,)	
v.)	No. 08-897V
)	Special Master
SECRETARY OF HEALTH)	Gary J. Golkiewicz
AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

STIPULATION

It is hereby stipulated by and between the parties, the following matters:

1. On December 16, 2008, William and Jodie Fedorka (“petitioners”), filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34, as amended (the “Vaccine Program”), on behalf of their minor daughter, Abagail Fedorka (“Abagail”). The petition seeks compensation for injuries allegedly related to Abagail’s receipt of a Rotateq vaccine, which is covered under the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3(a), as amended.
2. Abagail received the Rotateq vaccine on September 21, 2007.
3. The vaccine was administered within the United States.
4. Petitioners allege that Abagail suffered intussusception of the small bowel 38 days after receipt of Rotateq vaccine; and that Abagail’s intussusception was caused-in-fact by receipt of the Rotateq vaccine.

5. Petitioners represent that there has been no prior award or settlement of a civil action for damages on Abagail's behalf as a result of her alleged vaccine-related injury.

6. Respondent denies that Abagail's intussusception was caused-in-fact by the Rotateq vaccine.

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 payment:

A lump sum of \$3,300.00 in the form of a check payable to petitioners, as Abagail's legal representatives. This amount represents 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. Payment 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.

11. 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.

12. In return for the payments described in paragraphs 8 and 9, petitioners, in their individual capacities and as legal representatives of Abagail, on behalf of themselves, Abagail, and her 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. § 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 Abagail resulting from, or alleged to have resulted from, the Rotateq vaccine administered on September 21, 2007, as alleged by petitioners in a petition for vaccine compensation filed on December 16, 2008, in the United States Court of Federal Claims as petition No. 08-897V.

13. If Abagail 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.

14. 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.

15. 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.

16. 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.

17. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that Abigail's intussusception was caused-in-fact by receipt of the Rotateq vaccine; or that Abigail's current disabilities are sequelae of her alleged injury.

18. All rights and obligations of petitioners hereunder shall apply equally to their successors and assigns as legal representatives of Abigail Fedorka.

END OF STIPULATION

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Respectfully submitted,

PETITIONERS:

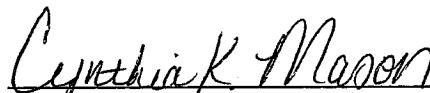


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