

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

No. 09-41V
Filed: October 29, 2010
Not to be Published

CHERI A. JOHNSON,

Petitioner,

v.

SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Respondent.

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Stipulation; Haemophilus influenza
group b vaccine, ActHib; Brachial
neuritis

DECISION¹

On October 29, 2010, 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 she suffered from brachial neuritis as a result of the tetanus toxoid-containing ActHib vaccine she received on October 13, 2006. Petitioner asserts alternatively that she suffered brachial neuritis within the time set forth in the Vaccine Injury Table, or that her condition was caused-in-fact by the vaccine, or that she suffered a significant aggravation of “some underlying neurologic, immunologic, or genetic disorder, or preexisting traumatic injury” as a result of the vaccine. Stipulation, ¶ 4. Petitioner further alleges that she experienced the residual effects of these injuries for more than six months. *Id.* Respondent denies that petitioner suffered a Table Injury and further denies that petitioner’s alleged brachial neuritis and alleged significant aggravation were caused-in-fact by the ActHib vaccine. Respondent denies petitioner experienced the residual effects of these injuries for more than six months. Nonetheless, the parties agreed informally to resolve this matter. In a telephone conversation with the undersigned’s office on October 29, 2010, and in accordance with General Order #9, petitioner’s counsel confirmed that petitioner’s own reimbursable out-of-pocket costs related to this Petition are accounted for in the \$1,396.35 award of costs payable to petitioner, as evidenced below and within the Stipulation, ¶ 8.

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.*

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 lump sum of \$175,000.00 in the form of a check payable to petitioner; a lump sum of \$31,000.00 in the form of a check payable jointly to petitioner and petitioner's attorney of record for all attorneys' fees and costs; and a lump sum of \$1,396.35 in the form of a check payable to petitioner for the petitioner's out-of-pocket expenses in proceeding on the Petition.** See Stipulation, para. 8, filed October 29, 2010.

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

IT IS SO ORDERED.

s/Gary Golkiewicz
Gary 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.

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

_____)	
CHERI A. JOHNSON,)	
)	
Petitioner,)	
)	
v.)	No. 09-41V
)	Special Master Golkiewicz
SECRETARY OF HEALTH AND HUMAN)	
SERVICES,)	
)	
Respondent.)	
_____)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Cheri A. Johnson (“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 petitioner’s receipt of the haemophilus influenzae group b (“ActHib”) vaccine,¹ which vaccine is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3 (a).

2. Petitioner received the ActHib vaccination on October 13, 2006.

3. The vaccine was administered within the United States.

4. Petitioner alleges that she sustained the first symptom or manifestation of brachial neuritis within the time period set forth in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3 (a) (I), as a consequence of receiving the tetanus toxoid-containing ActHib vaccine (“Table Injury”) or, alternatively, that she sustained (a) a vaccine-related injury diagnosed as brachial

¹ The ActHib vaccine petitioner received contained tetanus toxoid.

neuritis that was caused in-fact by the ActHib vaccine or (b) suffered a significant aggravation of “some underlying neurologic, immunologic, or genetic disorder, or preexisting traumatic injury” as a result of the ActHib vaccine. She further alleges that she experienced the residual effects of these injuries for more than six months.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of her injuries.

6. Respondent denies that petitioner suffered a Table injury; denies that petitioner’s alleged brachial neuritis and alleged significant aggravation of an underlying neurologic, immunologic, or genetic disorder, or preexisting traumatic injury were caused-in-fact by the ActHib vaccine; and denies that petitioner experienced the residual effects of these 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 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 \$175,000.00 in the form of a check payable to petitioner. This amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a);
- b. A lump sum of \$31,000 in the form of a check payable jointly to petitioner and her counsel, Elizabeth M. Muldowney, Esq., of Rawls & McNelis, P.C., for all attorneys’ fees and costs that would be available under 42 U.S.C. §300aa-15(e); and

c. A lump sum of \$1,396.35 in the form of a check payable to petitioner. This amount represents out-of-pocket expenses that were incurred by petitioner in proceeding on the petition.

9. Petitioner and her 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.

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

12. In return for the payments described in paragraph 8, petitioner, in her individual capacity and on behalf of herself, her 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. § 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 petitioner resulting from, or

alleged to have resulted from, the ActHib and/or meningococcal vaccines administered on October 13, 2006, as alleged by petitioner in a petition for vaccine compensation filed on or about January 21, 2009, or the ActHib vaccine administered on October 13, 2006, as alleged by petitioner in an amended petition for vaccine compensation filed on or about July 14, 2010, in the United States Court of Federal Claims as petition No. 09-41V.

13. If petitioner 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.

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. 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. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that petitioner sustained a Table injury; a vaccine-related injury diagnosed as brachial neuritis that was caused in-fact by the ActHib vaccine; a

vaccine-related significant aggravation of an underlying neurologic, immunologic, or genetic disorder, or preexisting traumatic injury that was caused in-fact by the ActHib vaccine; or that petitioner experienced the residual effects of these alleged injuries for more than six months.

17. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

END OF STIPULATION

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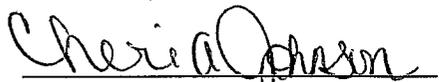
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Respectfully submitted,

PETITIONER:


CHERI A. JOHNSON

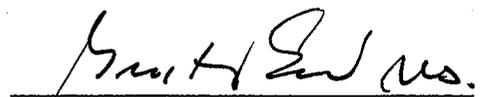
**ATTORNEY OF RECORD FOR
PETITIONER:**


ELIZABETH M. MULDOWNEY
Rawls & McNelis, P.C.
Suite 1701
1111 East Main Street
Richmond, Virginia 23219
(804) 622-0676

**AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:**


MARK W. ROGERS
Deputy Director
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146

**AUTHORIZED REPRESENTATIVE
OF THE SECRETARY OF HEALTH
AND HUMAN SERVICES:**


GEOFFREY EVANS, M.D.
Director, Division of
Vaccine Injury Compensation
Healthcare Systems Bureau
U.S. Department of Health
and Human Services
5600 Fishers Lane
Parklawn Building, Mail Stop 11C-26
Rockville, MD 20857

**ATTORNEY OF RECORD FOR
RESPONDENT:**


CHRYSOVALANTIS P. KEFALAS
Trial Attorney
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
(202) 616-9197

Dated: October 29, 2010