

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 00-423V

Filed: February 27, 2006

\*\*\*\*\*
MICHAEL KAK-SING LEE, a minor, by \*
and through his father, \*
KWOK YAM LEE, \*
Petitioner, \*
v. \*
SECRETARY OF THE DEPARTMENT OF \*
HEALTH AND HUMAN SERVICES, \*
Respondent. \*
\*\*\*\*\*

DECISION<sup>1</sup>

On February 15, 2006, the parties to the above captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. The court hereby grants the parties' said Stipulation. The Clerk shall enter judgment accordingly.<sup>2</sup>

IT IS SO ORDERED.

[Handwritten signature of Gary J. Golkiewicz]
Gary J. Golkiewicz
Chief Special Master

<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 trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and 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.

<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 Court of Federal Claims judge.

XTRA

THE UNITED STATES COURT OF FEDERAL CLAIMS  
OFFICE OF SPECIAL MASTERS

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and through his father, KWOK YAM LEE, )  
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Petitioner, )  
v. )  
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SECRETARY OF HEALTH AND HUMAN )  
SERVICES, )  
 )  
Respondent. )  
\_\_\_\_\_

FEB 15 2006  
CLERK

No. 00-423V  
Chief Special Master Golkiewicz

STIPULATION

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

1. On behalf of his son, Michael Kak-Sing Lee ("Michael"), petitioner filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq. (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to Michael's receipt of the Measles-Mumps-Rubella (MMR) or Diphtheria-Tetanus-Pertussis (DTaP) vaccines, which vaccines are contained in the Vaccine Injury Table (the "Table"), 42 U.S.C. § 300aa-14(a)(I), (II).
2. Michael received his MMR and DTaP immunizations on July 17, 1997.
3. The vaccines were administered within the United States.
4. Michael sustained the first symptom or manifestation of the onset of an encephalopathy within the time period set forth in the Table.
5. Michael suffered the residual effects or complications of his encephalopathy for more than six months after his vaccination.

6. There is not a preponderance of the evidence demonstrating that Michael's condition is due to a factor unrelated to his July 17, 1997 immunizations.

7. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of Michael as a result of his condition.

8. Accordingly, Michael is entitled to compensation under the terms of the Vaccine Program. Therefore, a decision should be entered awarding the compensation described in paragraph 9 of this Stipulation.

9. 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 \$7,500.00 in the form of a check payable to petitioner. This amount represents compensation for Michael's first year medical, tutoring, and therapy payments;

b. A lump sum of \$10,000.00 in the form of a check payable to petitioner. This amount represents compensation for partial pain and suffering;

c. An amount sufficient to purchase the annuity contracts described in paragraphs 11 and 12 below, paid to the life insurance company from which the annuities will be purchased (the "Life Insurance Companies"). These amounts represent compensation for all remaining elements of compensation under 42 U.S.C. § 300aa-15(a); and

d. A lump sum of \$12,500.00 in the form of a check payable to petitioner and petitioner's attorney, Robert G. Schock, for attorney's fees and costs.

10. 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.

11. The Secretary of Health and Human Services agrees to purchase an annuity contract from the Life Insurance Company for the benefit of Michael Lee, pursuant to which the Life Insurance Company will agree to make payments periodically to petitioner until Michael's eighteenth birthday, and to Michael Lee thereafter, for the following items of compensation:

- a. For future unreimbursable Tutoring expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$4,500.00 to be paid up to the anniversary of the date of judgment in year 2010, increasing at the rate of four percent (4.0%), compounded annually from the date of judgment;
- b. For future unreimbursable Medical expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$375.00 to be paid for the remainder of Michael's life, increasing at the rate of four percent (4.0%), compounded annually from the date of judgment;
- c. For future unreimbursable Therapy expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$1,500.00 to be paid up to the anniversary of judgment in year 2011, then beginning on the anniversary of the date of judgment in the year 2011 an annual amount of \$500.00 to be paid for the remainder of Michael's life, all amounts increasing at the rate of four percent (4.0%), compounded annually from the date of judgment.

At the sole discretion of the Secretary of Health and Human Services, the periodic payments may be provided to petitioner, and later, to Michael Lee, in monthly, quarterly, annual or other installments. The "annual amounts" set forth above describe only the total yearly sum to be paid to petitioner, and later, to Michael Lee, and do not require that the payment be made in one

annual installment. Petitioner will continue to receive the annuity payments outlined above from the Life Insurance Company only so long as Michael is alive at the time that a particular payment is due. Petitioner shall provide written notice to the Secretary of Health and Human Services and to the Life Insurance Company within twenty (20) days of Michael Lee's death.

12. The Secretary of Health and Human Services agrees to purchase an annuity contract from the Life Insurance Company for the benefit of Michael Lee, pursuant to which the Life Insurance Company will agree to make payments periodically to petitioner until Michael's eighteenth birthday, and to Michael thereafter, for the following item of compensation:

- a. For past and future Pain and Suffering, beginning on the anniversary of the date of judgment in the year 2010, a lump sum in the amount of \$10,000.00 to be paid on each anniversary of the date of judgment up to the anniversary of the date of judgment in year 2013 for a total of four (4) payments; then on the anniversary of the date of judgment in year 2017, a lump sum in the amount of \$25,000.00; and finally, on the anniversary of the date of judgment in year 2022, a lump sum in the amount of \$40,000.00.

Should Michael predecease the payment of all pain and suffering payments described above, any remaining payments shall be made payable to the Estate of Michael Kak-Sing Lee. Petitioner shall provide written notice to the Secretary of Health and Human Services and to the Life Insurance Company within twenty (20) days of Michael Lee's death.

13. The annuity contracts 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 9 herein. Upon the purchase

of the annuity contracts, 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.

14. Payments made 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.

15. The parties and their attorneys further agree and stipulate that, except for attorney's fees and costs, the money provided pursuant to this Stipulation, either immediately or as part of the annuity contracts, will be used solely for the benefit of Michael 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).

16. Petitioner represents that he presently is, or within 90 days of the date of judgment will become, duly authorized to serve as guardian and/or conservator of Michael's estate under the laws of the State of California. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing his appointment as guardian/conservator of Michael's estate.

17. In return for the payments described in paragraph 9, petitioner, in his individual capacity and as legal representative of Michael, on behalf of himself, Michael, and Michael's heirs, executors, administrators, successors or assigns, does 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 Michael resulting from, or alleged to have resulted from, the MMR and DTP vaccinations administered

on July 17, 1997, as alleged by petitioner in a petition for vaccine compensation filed on or about July 19, 2000, in the United States Court of Federal Claims as petition No. 00-423V.

18. In the event Michael should die prior to the Secretary making any or all of the payments described in paragraph 9, this agreement shall be considered voidable upon proper notice to the Court on behalf of either or both of the parties.

19. In the event the special master fails to issue a decision in complete conformity with the terms of this Stipulation or in the event 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.

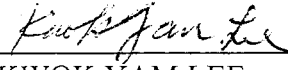
20. This Stipulation expresses a full and complete settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to.

21. All rights and obligations of petitioner hereunder shall apply equally to his successors and assigns as legal representatives of Michael Lee.

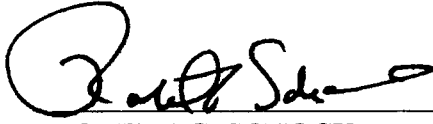
END OF STIPULATION

Respectfully submitted,

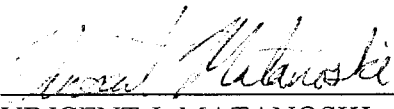
**PETITIONER:**

  
KWOK YAM LEE

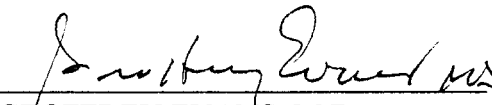
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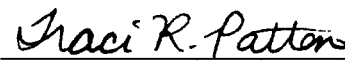
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Dated: 1-25-06 2-14-06