

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 03-1680V

Filed: January 11, 2006

JOHN ANDREW STOKES, and BETH STOKES, *
on behalf of, as parents of and next friends to *
KRISTEN APRIL STOKES, a minor, *
*
*
Petitioners, *
*
v. *
*
SECRETARY OF THE DEPARTMENT OF *
HEALTH AND HUMAN SERVICES, *
*
Respondent. *

DECISION¹

On January 5, 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.²

IT IS SO ORDERED.

Gary J. Golkiewicz
Chief Special Master

¹The 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.

²Pursuant 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.

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v.) No. 03-1680V
) Chief Special Master
SECRETARY OF HEALTH AND) Golkiewicz
HUMAN SERVICES,)
)
)
Respondent.)
)

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of their daughter, Kristen April Stokes ("Kristen"), 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 Kristen's receipt of the Mumps, Measles, Rubella (MMR) vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 U.S.C. § 300aa-14(a)(II).
2. Kristen received her MMR immunization on July 13, 2000.
3. The vaccine was administered within the United States.
4. Petitioners allege that Kristen suffered from an initial seizure and encephalopathy which developed within nine days of the MMR vaccination. They further allege that she continues to suffered seizures as sequelae of her Table injury.

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

6. Respondent denies that Kristen suffered a Table injury, denies that Kristen's condition was caused by the MMR vaccine, and denies that her current disabilities are sequelae of her alleged Table 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 \$166,432.43 in the form of a check payable to PeoplesBank, a Codorus Valley Company, for the benefit of Kristen Stokes. This amount represents trust seed funds in the amount of \$154,668.67 (the present value of partial lost future earnings) and compensation in the amount of \$11,763.76 for expenses expected to be incurred during the first year after judgment that would be available under 42 U.S.C. §300aa-15(a); and

b. A lump sum of \$108,160.68 in the form of a check payable to petitioners as guardians/conservators of Kristen Stokes's estate. This amount represents compensation for actual and future pain and suffering that would be available under 42 U.S.C. §300aa-15(a); and

c. A lump sum of \$1,944.86 in the form of a check payable to petitioners, John Andrew Stokes and Beth Stokes. This amount represents compensation for past unreimbursable expenses that would be available under 42 U.S.C. §300aa-15(a); and

d. An amount sufficient 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").

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 for the benefit of Kristen, pursuant to which the Life Insurance Company will agree to make payments periodically to PeoplesBank, a Codorus Valley Company, as trustee for the benefit of Kristen Stokes, for the following items of compensation:

- a. For future unreimbursable Medicare Part B premium and deductible, and Medicare Part A deductible expenses, beginning on the anniversary of the date of judgment in year 2039, an annual amount of \$1,960.40 to be paid for the remainder of Kristen's life, increasing at the rate of four percent (4%), compounded annually from the date of judgment.
- b. For future unreimbursable developmental pediatrician expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$15.00 to be paid up to the anniversary of the date of judgment in year 2019, increasing at the rate of four percent (4%), compounded annually from the date of judgment.
- c. For future unreimbursable neurology expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$60.00 to be paid up to the anniversary of the date of judgment in year 2019; then, beginning on the anniversary of the date of judgment in year 2019, an annual amount of \$514.00 to be paid up to the anniversary of the date of judgment in 2039; thereafter, beginning on the anniversary of the date of judgment in 2039, an annual amount of \$102.80 to be paid for the remainder of Kristen's life, all amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment.

d. For future unreimbursable hospitalization (including Epilepsy surgery) and lab work expenses, on the first anniversary of the date of judgment, a lump sum payment of \$1,932.52; then, beginning on the anniversary of the date of judgment in year 2019, an annual amount of \$1,900.00 to be paid up to the anniversary of the date of judgment in 2039, all amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment.

e. For future unreimbursable radiology expenses, on the anniversary of the date of judgment on 2019, a lump sum payment of \$1,653.00; then, beginning on the anniversary of the date of judgment in year 2020, an annual amount of \$330.60 to be paid up to the anniversary of the date of judgment in 2035; then, on the anniversary of the date of judgment on 2039, a lump sum payment of \$330.60; thereafter, beginning on the anniversary of the date of judgment in 2040, an annual amount of \$66.12 to be paid for the remainder of Kristen's life, all amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment.

f. For future unreimbursable prescription medication expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$240.00 to be paid up to the anniversary of the date of judgment in year 2019; then, beginning on the anniversary of the date of judgment in year 2019, an annual amount of \$3,628.68 to be paid for the remainder of Kristen's life, all amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment.

g. For future unreimbursable individual counseling expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$320.00 to be paid up to the anniversary of the date of judgment in 2010; then, on the anniversary of the date of judgment in year 2011, a lump sum payment of \$320.00; then, on the anniversary of the date of judgment in 2015, a lump sum payment of \$320.00; then, on the anniversary of the date of judgment in 2017, a lump sum payment of \$320.00; then, on the anniversary of the date of judgment in 2024, a lump sum payment of \$1,680.00; then, on the anniversary of the date of judgment on 2034, a lump sum payment of \$1,680.00, all amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment.

h. For future unreimbursable neuro-psychological testing expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$912.00 to be paid up to the anniversary of the date of judgment in 2018, increasing at the rate of four percent (4%), compounded annually from the date of judgment.

i. For future unreimbursable case management expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$900.00 to be paid up to the anniversary of the date of judgment in year 2007; then, beginning on the anniversary of the date of judgment in year 2007, an annual amount of \$450.00 to be paid up to the anniversary of the date of judgment in 2019; thereafter, beginning on the anniversary of the date of judgment in 2019, an annual amount of \$300.00 to be paid for the remainder of Kristen's life, all amounts

increasing at the rate of four percent (4%), compounded annually from the date of judgment.

j. For future unreimbursable tutoring expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$3,240.00 to be paid up to the anniversary of the date of judgment in year 2010; then, beginning on the anniversary of the date of judgment in year 2010, an annual amount of \$1,620.00 to be paid up to the anniversary of the date of judgment in 2019, all amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment.

k. For future unreimbursable computer expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$200.00 to be paid up to the anniversary of the date of judgment in year 2016, increasing at the rate of four percent (4%), compounded annually from the date of judgment.

l. For future unreimbursable computer program expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$100.00 to be paid up to the anniversary of the date of judgment in year 2019, increasing at the rate of four percent (4%), compounded annually from the date of judgment.

m. For future unreimbursable attendant care and mileage expenses, beginning on the anniversary of the date of judgment in 2019, an annual amount of \$13,709.38 to be paid for the remainder of Kristen's life, increasing at the rate of four percent (4%), 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 the trustee in monthly, quarterly, annual or other installments. The "annual amounts" set forth above describe only the total yearly sum to be paid to the trustee and do not require that the payment be made in one annual installment. The trustee will continue to receive the annuity payments from the Life Insurance Company only so long as Kristen is alive at the time that a particular payment is due. Petitioners shall provide written notice to the trustee, the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of Kristen'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 unreimbursed 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 Kristen 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. 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 Kristen's estate under the laws of the Commonwealth of Virginia. No payments pursuant to this Stipulation shall be made until

petitioners provide the Secretary with documentation establishing their appointment as guardians/conservators of Kristen's estate.

16. In return for the payments described in paragraphs 8 and 12, petitioners, in their individual capacities and as legal representatives of Kristen, on behalf of themselves, Kristen, and her 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 Kristen resulting from, or alleged to have resulted from, the MMR vaccination administered on July 13, 2000, as alleged by petitioners in a petition for vaccine compensation filed on or about July 11, 2003, in the United States Court of Federal Claims as petition No. 03-1680V.

17. If Kristen should die prior to the Secretary making any or all of 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.

18. If the Chief 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.

19. 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.

20. All rights and obligations of petitioners hereunder shall apply equally to their successors and assigns as legal representatives of Kristen April Stokes.

END OF STIPULATION

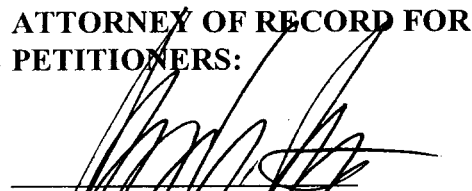
Respectfully submitted,

PETITIONERS:

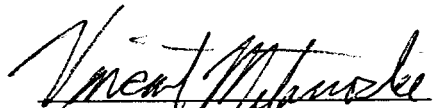

JOHN ANDREW STOKES


BETH STOKES

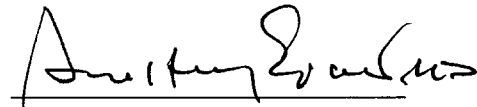
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