

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 10-185V

Filed: October 21, 2011

SARAH SMITH and RONALD SMITH,)	
as legal representatives of their son,)	
DYLAN SMITH,)	
)	NOT TO BE PUBLISHED
Petitioners,)	
)	
v.)	Stipulation; diphtheria; tetanus;
)	acellular pertussis; hepatitis B;
SECRETARY OF)	inactivated polio virus; rotavirus;
HEALTH AND HUMAN SERVICES,)	intussusception
)	
Respondent.)	
)	

Anne C. Toale, Maglio Christopher & Toale, Sarasota, F.L., for Petitioners;
Lisa A. Watts, United States Dep't of Justice, Washington, D.C., for Respondent.

DECISION¹

LORD, Special Master.

On October 13, 2011, the parties in the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Sarah Smith and Ronald Smith ("Petitioners"), as legal representatives of their son, Dylan Smith ("Dylan"), allege that Dylan was injured by the rotavirus vaccination he was given on March 28, 2007, which vaccine is contained in the Vaccine Injury Table, 42 C.F.R § 100.3(a). Dylan received a combination diphtheria, tetanus, acellular pertussis, hepatitis B, and inactivated polio virus immunization and a rotavirus immunization on March 28, 2007. Petitioners allege that Dylan developed intussusception that was caused-in-fact by his rotavirus vaccination and that his condition required surgical intervention. Petitioners seek compensation related to this injury pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 to 34.

Respondent denies that Dylan's intussusception or any sequela was caused-in-fact by his rotavirus vaccination on March 28, 2007. Nonetheless, the parties have agreed informally to resolve this matter.

The court hereby ADOPTS the parties' said Stipulation, attached hereto as Appendix A, and awards compensation in the amount and on the terms set forth therein. Specifically, Petitioner is awarded:

¹ In accordance with Vaccine Rule 18(b), petitioner has 14 days to file a proper motion seeking redaction of medical or other information that satisfies the criteria in 42 U.S.C. § 300aa-12(d)(4)(B). Redactions ordered by the special master, if any, will appear in the decision as posted on the United States Court of Federal Claims' website.

A lump sum of \$8,500.00, in the form of a check payable to Petitioners as guardians/conservators of Dylan's estate, which amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

The court thanks the parties for their cooperative efforts in resolving this matter. In the absence of a motion for review filed pursuant to RCFC, Appendix B, the Clerk is directed to enter judgment accordingly.²

IT IS SO ORDERED.

s/Dee Lord
Dee Lord
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

SARAH SMITH and RONALD SMITH, *
as legal representatives of their son, *
DYLAN SMITH, *

Petitioners, *

v. *

SECRETARY OF HEALTH AND *
HUMAN SERVICES, *

Respondent. *

No. 10-185V
SPECIAL MASTER
SANDRA D. LORD

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of their son, Dylan Smith ("Dylan"), 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 Dylan's receipt of a rotavirus vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Dylan received a combination diphtheria, tetanus, acellular pertussis, hepatitis B and inactivated polio virus ("Dtap-HepB-IPV") immunization and a rotavirus immunization on March 28, 2007.
3. These vaccines were administered within the United States.
4. Petitioners allege that Dylan developed intussusception that was caused in fact by his rotavirus vaccination and that his condition required surgical intervention.

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

6. Respondent denies that Dylan's intussusception or any sequella were caused-in-fact by his rotavirus vaccination administered on March 28, 2007.

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 \$8,500.00 in the form of a check payable to petitioners as guardians/conservators of Dylan's estate. 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. Petitioners and their attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any 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 by 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, and litigation costs, and past unreimbursable expenses, the money provided pursuant to this Stipulation, will be used solely for the benefit of Dylan 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 Dylan's estate under the laws of the State of Minnesota.

14. In return for the payments described in paragraphs 8 and 9, petitioners, in their individual capacity and as legal representatives of Dylan, on behalf of themselves, Dylan, 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 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. § 300aa-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 Dylan resulting from, or alleged to have resulted

from, the Dtap-HepB-IPV and/or rotavirus vaccinations administered on March 28, 2007, as alleged by petitioners in a petition for vaccine compensation filed on or about March 26, 2010, in the United States Court of Federal Claims as petition No. 10-185V.

15. If Dylan 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.

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.

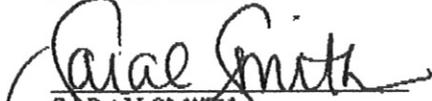
18. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that Dylan's intussusception or any sequella of this condition were caused-in-fact by his rotavirus vaccination administered on March 28, 2007.

19. All rights and obligations of petitioners hereunder shall apply equally to petitioners' heirs, executors, administrators, successors, and/or assigns as legal representatives of Dylan Smith.

END OF STIPULATION

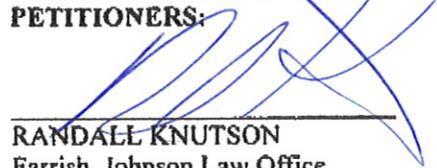
Respectfully submitted,

PETITIONERS:

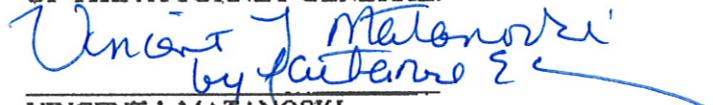

SARAH SMITH


RONALD SMITH

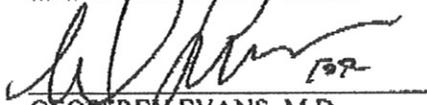
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Dated 13 October 2011