

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. XX-XXV

Filed: September 29, 2010

CHILD DOE/91, by and through	)	
JOHN DOE/91 AND JANE DOE/91,	)	NOT TO BE PUBLISHED
As parents and natural guardians,	)	
	)	
Petitioners,	)	Stipulation; Diphtheria-Tetanus-
	)	acellular Pertussis (DTaP); influenza
v.	)	(flu) vaccine
	)	
SECRETARY OF	)	
HEALTH AND HUMAN SERVICES,	)	
	)	
Respondent.	)	

Anne C. Toale, Maglio Christopher & Toale, Sarasota, FL for Petitioners;  
Chrysovalantis P. Kefalas, United States Dep't of Justice, Washington, D.C., for Respondent.

### DECISION<sup>1</sup>

**LORD**, Chief Special Master.

On September 27, 2010, the parties in the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation and fees in this case. Petitioners, JOHN and JANE DOE/91, alleged that their son, CHILD DOE/91, sustained the first symptom or manifestation of an injury listed on the Table within the time period set forth in the Vaccine Injury Table, 42 C.F.R. § 100.3 (a)(I) & (II), as a consequence of receiving the Diphtheria-Tetanus-acellular Pertussis (DTaP) or, alternatively, that he sustained a vaccine-related injury diagnosed as a complex seizure disorder as a result of the DTaP and Influenza (flu) vaccines. Respondent denies that the DTaP and/or flu vaccine(s) caused CHILD DOE/91's injuries.

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, Petitioners are awarded:

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<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.

- a. A lump sum of **\$1,164.68**, which amount represents reimbursement of a State of Florida Medicaid lien, **in the form of a check payable jointly to petitioners, and**

**Agency for Health Care Administration  
State of Florida Medicaid Third Party Liability  
ACS Recovery Service  
2308 Killearn Center Blvd.  
Tallahassee, FL 32309  
Attn: Jennifer Kent**

This amount represents partial compensation for damages that would be available under 42 U.S.C. §300aa-15(a).

- b. An amount sufficient to purchase the annuity contract described in paragraph 10 of the Stipulation paid to the life insurance company from which the annuity will be purchased.

The Clerk of the Court is directed to enter judgment accordingly.<sup>2</sup>

**IT IS SO ORDERED.**

s/ Dee Lord  
Dee Lord  
Chief Special Master

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<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 United States Court of Federal Claims judge.



[REDACTED]

and Flu vaccines. They further allege that [REDACTED] experienced the residual effects of these injuries for more than six months.

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

6. Respondent denies that [REDACTED] suffered a Table injury; denies that [REDACTED] alleged complex partial seizure disorder was caused-in-fact by the DTaP and Flu vaccines; denies that his current disabilities are sequelae of his alleged injuries; and denies that [REDACTED] 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 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 \$1,164.68, which amount represents reimbursement of a State of Florida Medicaid lien, in the form of a check payable jointly to petitioners, and

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Attn: Jennifer Kent

This amount represents partial compensation for damages that would be available under 42 U.S.C. §300aa-15(a); and

[REDACTED]

b. 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 [REDACTED] pursuant to which the Life Insurance Company will agree to make payments periodically to [REDACTED] as follows:

For all remaining damages that would be available under 42 U.S.C. §300aa-15(a), beginning on February 4, 2025, \$3,516.30 per year for 10 years certain. Should [REDACTED] predecease the exhaustion of the certain payments during the certain period specified above, any remaining payments shall be made to his estate. However, petitioners shall provide written notice to the Secretary of Health and Human Services and to the Life Insurance Company within twenty (20) days of [REDACTED] 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

[REDACTED]

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. 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. Sec. 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. sec. 1396 et seq.)), or by entities that provide health services on a pre-paid basis.

14. 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.

15. 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

[REDACTED]

pursuant to this Stipulation either immediately or as part of the annuity contract, will be used solely for the benefit of [REDACTED] 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. In return for the payments described in paragraphs 8 and 12, petitioners, in their individual capacities and as legal representatives of [REDACTED], on behalf of themselves, [REDACTED] 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. § 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 [REDACTED] resulting from, or alleged to have resulted from, the DTaP and Flu vaccinations administered on or about December 5, 2005, as alleged by petitioners in a petition for vaccine compensation filed on or about January 25, 2008, in the United States Court of Federal Claims as petition No. 08-56V.

17. If [REDACTED] 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.

18. 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.

[REDACTED]

19. 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 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. 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.

20. Petitioners hereby authorize 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.

21. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that [REDACTED] suffered a Table injury; that [REDACTED] sustained a vaccine-related injury diagnosed as a complex partial seizure disorder as a result of the DTaP and Flu vaccines; that his current disabilities are sequelae of his alleged injuries; or that [REDACTED] experienced the residual effects of these alleged injuries for more than six months.

22. All rights and obligations of petitioners hereunder shall apply equally to petitioners' heirs, executors, administrators, successors, and/or assigns as legal representatives of [REDACTED]

[REDACTED]

END OF STIPULATION

/

/

[REDACTED]

Respectfully submitted,

**PETITIONERS:**

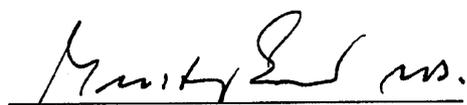
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Dated: September 27, 2010