

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 10-807 V

Filed: September 30, 2011

Not for Publication

ANTHONY J. and ANGELA B. HAMBY *
As Parents and Guardian Ad Litem of *
MEGAN LANEE HAMBY, *

Petitioners, *

v. *

SECRETARY OF THE DEPARTMENT *
OF HEALTH AND HUMAN SERVICES, *

Respondent. *

Peter J. Sarda, Raleigh, NC, for petitioners.
Jennifer L. Reynaud, Washington, DC, for respondent.

MILLMAN, Special Master

**DECISION AWARDING DAMAGES AND
ATTORNEYS' FEES AND COSTS¹**

On September 30, 2011, the parties filed the attached stipulation, in which they agreed to settle this case and described the settlement terms. Petitioners allege that the vaccinee suffered from acute disseminated encephalomyelitis (“ADEM”) following a tetanus-diphtheria-acellular-pertussis (“Tdap”) vaccine. Respondent denies that the vaccinee’s ADEM was caused in fact by

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would constitute a clearly unwarranted invasion of privacy. When such a decision is filed, petitioner has 14 days to identify and move to redact such information prior to the document’s disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall redact such material from public access.

her Tdap vaccine. Nonetheless, the parties agreed to resolve this matter informally.

In the same stipulation, the parties settled the attorneys' fees and costs in this case. Petitioners request \$7,500.00 in attorneys' fees and costs. In accordance with the General Order #9 requirements, petitioners state that they did not incur any costs to pursue the petition.

The court hereby adopts the parties' stipulation and awards compensation in the amount and on the terms set forth therein. Pursuant to the stipulation, the court awards:

- a. A lump sum of **\$15,000.00** in the form of a check made payable to petitioners as guardians/conservators of Megan's estate.
- b. A lump sum of **\$7,500.00** in the form of a check payable jointly to petitioners and Creech Law Firm, representing reimbursement for attorneys' fees and costs.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.²

IT IS SO ORDERED.

Dated: September 30, 2011

s/ Laura D. Millman
Laura D. Millman
Special Master

² Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.

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

_____)	
ANTHONY J. HAMBY and ANGELA B.)	
HAMBY, as Parents and Guardians Ad Litem)	
of MEGAN LANE E HAMBY,)	
)	
Petitioners,)	
)	
v.)	No. 10-807V
)	Special Master Millman
SECRETARY OF HEALTH)	
AND HUMAN SERVICES,)	
)	
Respondent.)	
_____)	

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of their daughter, Megan Lane e Hamby (“Megan”), 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 Megan’s receipt of the tetanus-diphtheria-acellular-pertussis (“Tdap”) vaccine, which vaccine is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3 (a).
2. Megan received her Tdap immunization on May 15, 2008.
3. The vaccine was administered within the United States.
4. Petitioners allege that Megan sustained a vaccine-related injury diagnosed as acute disseminated encephalomyelitis (“ADEM”) that was caused-in-fact by the Tdap vaccine. They further allege that she experienced the residual effects of this injury 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 Megan as a result of her condition.

6. Respondent denies that Megan's alleged ADEM and residual effects were caused-in-fact by the Tdap vaccine and denies that Megan experienced the residual effects of this injury 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 \$15,000.00 in the form of a check payable to petitioners as guardians/conservators of Megan's estate. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a); and

b. A lump sum of \$7,500.00 in the form of a check payable jointly to petitioners and petitioners' attorney, Peter J. Sarda, for attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e), and, in compliance with General Order #9, no out-of-pocket expenses were incurred by petitioners in proceeding on the petition.

9. 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.

10. 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 Megan 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).

11. Petitioners represent that they presently are, or within 90 days of the date of judgment will become, duly authorized to serve as conservators of Megan's estate under the laws of the State of North Carolina. No payments pursuant to this Stipulation shall be made until petitioners provide the Secretary with documentation establishing their appointment as conservators of Megan's estate. If petitioners are not authorized by a court of competent jurisdiction to serve as conservators of the estate of Megan Lane Hamby at the time a payment pursuant to this Stipulation is to be made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as conservator of the estate of Megan Lane Hamby upon submission of written documentation of such appointment to the Secretary.

12. In return for the payments described in paragraph 8, petitioners, in their individual capacities and as legal representatives of Megan, on behalf of themselves, Megan, and her 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 Megan resulting from, or alleged to have resulted from, the Tdap vaccination administered on May 15, 2008, as alleged by petitioners in a petition for vaccine compensation filed on or about November 19, 2010, in the United States Court of Federal Claims as petition No. 10-0807V.

13. If Megan 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.

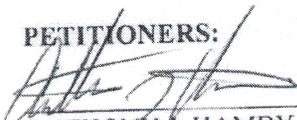
16. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that Megan sustained a vaccine-related injury diagnosed as ADEM, or any other injury, that was caused-in-fact by the Tdap vaccine or that Megan experienced the residual effects of any alleged injury for more than six months.

17. All rights and obligations of petitioners hereunder shall apply equally to petitioners' heirs, executors, administrators, successors, and/or assigns as legal representatives of Megan Lanee Hamby.

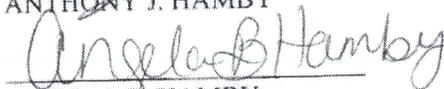
END OF STIPULATION

Respectfully submitted,

PETITIONERS:



ANTHONY J. HAMBY



ANGELA B. HAMBY

**ATTORNEY OF RECORD FOR
PETITIONERS:**



PETER J. SARDA

Creech Law Firm
15 Glenwood Avenue, Suite 300
Raleigh, NC 27603
(919) 787-7766

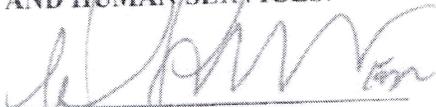
**AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:**



VINCENT J. MATANOSKI

Acting 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:**




JENNIFER L. REYNAUD

Trial Attorney
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
(202) 305-1586

Dated: 30 SEP 2011