

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 09-867 V

Originally Filed: June 10, 2011

Filed Redacted: June 14, 2011

Not for Publication

CLARITZA and WILLIAM TORRES, *
As Parents and Natural Guardians of *
W. T., *

Petitioners, *

v. *

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

Respondent. *

F. John Caldwell, Jr., Sarasota, FL, for petitioners.
Darryl R. Wishard, Washington, DC, for respondent.

Damages Decision Based on Stipulation;
Menactra, DTaP, Varivax vaccines,
Guillain-Barré syndrome

MILLMAN, Special Master

DECISION AWARDING DAMAGES¹

On June 10, 2011, the parties filed the attached stipulation, in which they agreed to settle this case and described the settlement terms. Petitioners alleged that W.T. suffered from Guillain-Barré syndrome following Menactra, DTaP, and Varivax vaccinations. Respondent denies that W.T.'s GBS was caused in fact by any of the vaccines administered to him on September 29, 2008. Nonetheless, the parties agreed to resolve this matter informally.

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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. On June 14, 2011, petitioners filed a motion to redact this decision. Petitioners' motion is GRANTED in part and DENIED in part. The minor child's name has been redacted to initials. His parents' names are not covered by the Vaccine Act or Rule 18(b)'s redaction provisions. Therefore, the minor child's name has been redacted to initials in both the decision and the attached stipulation, but the parents' names have not.

The court hereby adopts the parties' said stipulation, attached hereto, 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 **\$100,000.00** in the form of a check made payable to petitioners as guardians/conservators of W.T.'s estate; and
- b. A lump sum of \$15,046.31, which amount represents compensation for reimbursement of the Medicaid lien, in the form of a check payable jointly to petitioner and Commonwealth of Pennsylvania, Department of Public Welfare, CIS# 940132255.

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: June 14, 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**

CLARITZA and WILLIAM TORRES,
as parents and natural guardians of

[REDACTED]

Petitioners,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

No. 09-867V ECF
Special Master Millman

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of their son, [REDACTED] (“[REDACTED]”), 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 [REDACTED]’s receipt of the Menactra, DTaP, and Varivax vaccines, which vaccines are contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3 (a).
2. [REDACTED] received the vaccines on September 29, 2008.
3. The vaccines were administered within the United States.
4. Petitioners allege that [REDACTED] developed Guillain-Barre Syndrome (“GBS”) as a result of receiving the vaccines, and that [REDACTED] experienced 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 [REDACTED] as a result of his condition.
6. Respondent denies that the vaccines caused [REDACTED]’s GBS and any current

disabilities, and denies that [REDACTED] 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 \$100,000.00, in the form of a check payable to petitioners as guardians/conservators of [REDACTED] estate; and
- b. A lump sum of \$15,046.31, which amount represents compensation for reimbursement of the Medicaid lien, in the form of a check payable jointly to petitioner and Commonwealth of Pennsylvania, Department of Public Welfare, CIS# 940132255.

These amounts represent 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 they have identified to respondent all known sources of payment for items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), including 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 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, the money provided pursuant to this Stipulation 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).

13. Petitioners represent that they presently are, or within 90 days of the date of judgment will become, duly authorized to serve as guardians of [REDACTED]'s estate under the laws of the Commonwealth of Pennsylvania. No payments pursuant to this Stipulation shall be made until petitioners provide the Secretary with documentation establishing their appointment as guardians of [REDACTED]'s estate. If petitioners are not authorized by a court of competent jurisdiction to serve as guardians of the estate of [REDACTED] Torres 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 guardian of the estate of [REDACTED] Torres upon submission of written documentation of such appointment to the Secretary.

14. In return for the payments described in paragraph 8, and any payments that may be made as described in paragraph 9, petitioners, in their individual capacity 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, 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 [REDACTED] resulting from, or alleged to have resulted from the Menactra, DTaP, and Varivax vaccines administered on September 29, 2008, as alleged by petitioners in a petition for vaccine compensation filed on or about December 16, 2009, in the United States Court of Federal Claims as petition No. 09-867V.

15. If [REDACTED] should die prior to entry of the 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 the vaccines caused [REDACTED] GBS or any current disability, or that [REDACTED] experienced the residual effects of this injury for more than six months.

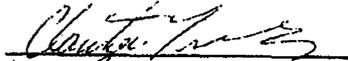
~~19. All rights and obligations of petitioners hereunder shall apply equally to petitioners' heirs, executors, administrators, successors, and/or assigns as legal representatives of William Torres.~~

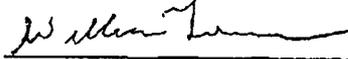
END OF STIPULATION

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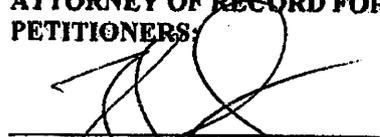
Respectfully submitted,

PETITIONERS:


CLARIZZA TORRES


WILLIAM TORRES

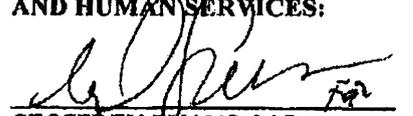
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Dated: 6/10/11