

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

**OFFICE OF SPECIAL MASTERS**

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TRACY R. FRICKE and \*  
ANDREW D. FRICKE \*  
as parents and legal representatives of \*  
NICKOLAS A. FRICKE, \*

Petitioner, \*

v. \*

SECRETARY OF HEALTH \*  
AND HUMAN SERVICES, \*

Respondent. \*

\*\*\*\*\*

No. 10-737V  
Special Master Christian J. Moran

Filed: July 14, 2011

Stipulation; death; hepatitis B;  
diphtheria-tetanus-acellular  
pertussis; inactive poliovirus;  
pneumococcal conjugate;  
rotavirus.

**UNPUBLISHED DECISION**<sup>1</sup>

Ramon Rodriguez, III, Rawls & McNelis, P.C., Richmond, VA, for Petitioner;  
Vincent J. Matanoski, U.S. Department of Justice, Washington, D.C., for Respondent.

On July 12, 2011, the parties filed a joint stipulation concerning the petition for compensation filed by Tracy and Andrew Fricke, as parents of their son Nickolas Fricke (“Nickolas”), on October 29, 2010. In their petition, the petitioners alleged that the hepatitis B, diphtheria-tetanus-acellular pertussis, inactive poliovirus, pneumococcal conjugate, and rotavirus vaccines, which are contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a), and which Nickolas received on November 17, 2008, resulted in Nickolas’s death, or that

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the special master’s action in this case, the special master intends to post it on the United States Court of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).

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 clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, the person submitting the information has 14 days to identify and to move to delete such information before the document’s disclosure. If the special master agrees that the identified material fits within the categories listed above, the special master shall redact such material from public access. 42 U.S.C. § 300aa-12(d)(4)(B); Vaccine Rule 18(b).

Nickolas's encephalopathy and cardiopulmonary arrest resulting in his death were caused by one or more of the vaccines.

Respondent denies that one or more of the vaccines received by Nickolas on November 17, 2008, caused him to suffer encephalopathy, cardiopulmonary arrest, and/or was a substantial factor in his death.

Nevertheless, the parties agree to the joint stipulation, attached hereto as Appendix A. The undersigned finds said stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

Damages awarded in that stipulation include:

- A. A lump sum payment of \$125,000.00 in the form of a check payable to petitioners as parents and legal representatives of the estate of Nickolas A. Fricke. This amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a).**

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 10-737V according to this decision and the attached stipulation.

Any questions may be directed to my law clerk, Jennifer C. Chapman, at (202) 357-6358.

IT IS SO ORDERED.

S/ Christian J. Moran

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Christian J. Moran  
Special Master

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

TRACY R. FRICKE and ANDREW D. FRICKE,  
As Parents and Legal Representatives of  
Nickolas A. FRICKE, deceased,

Petitioners,

v.

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

Respondent.

**ECF**

**No. 10-737V  
Special Master  
Christian J. Moran**

**STIPULATION**

The parties hereby stipulate to the following matters:

1. Tracy R. Fricke and Andrew D. Fricke ("Petitioners") filed a petition as parents and legal representatives of their deceased son, Nickolas A. Fricke ("Nickolas"), for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34 (the "Vaccine Program"), on October 29, 2010. The petition seeks compensation for Nickolas's death, which petitioners allege resulted from the hepatitis B, diphtheria-tetanus-acellular pertussis, inactive poliovirus, pneumococcal conjugate, and rotavirus vaccines, which vaccines are contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. Nickolas received the vaccines on November 17, 2008.
3. The vaccines were administered within the United States.
4. Petitioners allege that one or more of the vaccines Nickolas received on November 17, 2008, resulted in his death, or that Nickolas's encephalopathy and cardiopulmonary arrest resulting in his death were caused in fact by one or more of the vaccines.
5. Petitioners represent that there has been no prior award or settlement of a civil action for damages on behalf of the Estate of Nickolas A. Fricke as a result of Nickolas's injury and/or death.

6. Respondent denies that one or more of the vaccines received by Nickolas on November 17, 2008, caused him to suffer encephalopathy, cardiopulmonary arrest, and/or was a substantial factor in his death.

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 payment:

A lump sum payment of \$125,000.00 in the form of a check payable to petitioners as Parents and Legal Representatives of the Estate of Nickolas A. Fricke. 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. Payments made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 9 will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

11. Petitioners represent that they have been appointed as the executors/administrators of the Estate of Nickolas A. Fricke under the laws of the State of Washington, and have filed proof of appointment in this case. If petitioners are not authorized by a court of competent jurisdiction to serve as executors/administrators of Nickolas A. Fricke's estate 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 administrators/conservators of the Estate of Nickolas A. Fricke upon submission of written documentation of such appointment to the Secretary.

12. In return for the payments described in paragraphs 8 and 9, petitioners, in their individual capacities, and as legal representatives of Nickolas's estate, on behalf of Nickolas's heirs, executors, administrators, successors or assigns, does 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 Nickolas A. Fricke resulting from, or alleged to have resulted from, the vaccines administered to Nickolas on November 17, 2008, as alleged in a Petition filed on October 29, 2010, in the United States Court of Federal Claims as petition No. 10-737V.

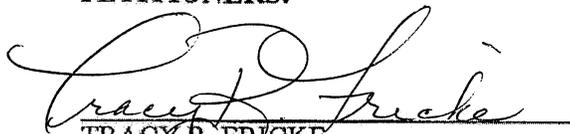
13. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

14. 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.



Respectfully submitted,

**PETITIONERS:**

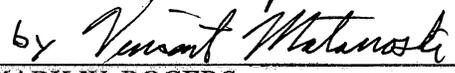
  
TRACY R. FRICKE

  
ANDREW D. FRICKE

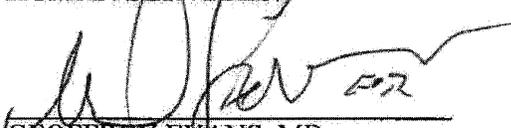
**ATTORNEY OF RECORD FOR  
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by   
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**AUTHORIZED REPRESENTATIVE OF  
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Dated: 12 JULY 2011