

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

**OFFICE OF SPECIAL MASTERS**

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WALTER RAY GRAVES and LISA GRAVES \*  
as representatives of the estate of \*  
HAYLEY NICOLE GRAVES, deceased, \*

Petitioners, \*

v. \*

SECRETARY OF HEALTH \*  
AND HUMAN SERVICES, \*

Respondent. \*

\*\*\*\*\*

No. 02-1211V  
Senior Judge James F. Merow  
Special Master Christian J. Moran

Filed: January 27, 2012

Motion for summary judgment;  
pain and suffering; death benefit  
award; Zatuchni.

Richard Gage, Richard Gage, P.C., Cheyenne, WY, for Petitioners;  
Lisa A. Watts, United States Department of Justice, Washington, DC, for  
Respondent.

**PUBLISHED RULING GRANTING PETITIONERS’  
MOTION FOR SUMMARY JUDGMENT\***

Walter Ray Graves and Lisa Graves, representatives of the estate of their  
daughter Hayley, are entitled compensation for Hayley’s death. The United States

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\* Because this ruling 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 a decision or designated substantive order is filed, a party has 14 days to identify  
and to move to delete such information before the document’s disclosure. If the special master,  
upon review, agrees that the identified material fits within the categories listed above, the special  
master shall delete such material from public access. 42 U.S.C. § 300aa–(12)(d)(4); Vaccine  
Rule 18(b).

Court of Federal Claims found that Prevnar caused Hayley's death. Graves v. Sec'y of Health & Human Servs., No. 02-1211V, 2011 WL 3010753 (2011).

The Vaccine Act provides that the estate of a deceased person may recover \$250,000.00 when a vaccine causes a person's death. 42 U.S.C. § 300aa-15(a)(2). The question is whether the estate is limited to only this amount or whether the estate may receive compensation for the emotional distress that Hayley experienced before her unfortunate death.

The Graveses filed a motion for summary judgment on November 30, 2011, claiming that they "are entitled to both a death benefit award in accordance with 42 U.S.C. § 300aa-15(a)(2) and a pain-and-suffering award in accordance with 42 U.S.C. § 300aa-15(a)(4)." The Secretary submitted a response on December 21, 2011. In her response, the Secretary argued that in a death case, a petitioner is limited to only a death benefit award according to 42 U.S.C. §300aa-15(a)(2).

### **FACTS**

Hayley was born in November 1999. Exhibit 14. During her nine-month appointment with her pediatrician, which occurred on August 8, 2000, Hayley received the second dose of Prevnar. Exhibit 1 at 29, 31, 33.

On August 10, 2000, Hayley had a left arm and leg focal seizure. The Graveses brought Hayley to a hospital, where she was treated for her seizures. Exhibit 2 at 1, 5. On August 29, 2000, Hayley was transferred to another hospital. Hayley remained at Hermann Hospital until she died on September 24, 2000. Exhibit 10B at 119.

The Graveses seek compensation for Prevnar's effects on Hayley. The Graveses request compensation in the form of a death benefit award and a pain and suffering award, and filed a motion for summary judgment on this issue. Pet'r Mot. at 1-2. For the reasons explained below, the Graveses' motion for summary judgment is GRANTED.

### **STANDARDS OF ADJUDICATION**

Summary judgment "is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules . . . which are designed

‘to secure the just, speedy and inexpensive determination of every action.’” Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986) (citations omitted). Congress specifically mandated that the Vaccine Rules “include the opportunity for summary judgment.” § 12(d)(2)(C). “Issues of statutory interpretation and other matters of law may be decided on motion for summary judgment.” Santa Fe Pacific R.Co. v. United States, 294 F.3d 1336, 1340 (Fed. Cir. 2002).

## **DISCUSSION**

As the parties recognize in their briefs, the decisive case about the scope of remedies in the Vaccine Program is Zatuchni v. Sec’y of Health & Human Servs., 516 F.3d 1312, 1321 (Fed. Cir. 2008). See Figueroa v. Sec’y of Health & Human Servs., No. 10-750V, 2011 WL 6369773, at \*1 (Dec. 20, 2011) (stating, with respect to Zatuchni, “this court must refrain from a de novo interpretation of the statutory text if binding precedent has already provided an interpretation of this section of the Vaccine Act.”).

In Zatuchni, Ms. Snyder filed a claim seeking compensation for an injury allegedly caused by her receipt of the measles, mumps, and rubella vaccination. Her claim remained pending for several years. Eventually, she was found entitled to compensation for her injuries. However, by this time, Ms. Snyder had died. Zatuchni v. Sec’y of Health & Human Servs., 69 Fed. Cl. 612 (2006).

After Ms. Snyder died, the legal representative of her estate was substituted. Ms. Zatuchni, as the representative of Ms. Snyder’s estate, sought the death benefit award, and also advanced a claim for out-of-pocket medical expenses, emotional distress, and past lost wages. The special master held that the estate could not recover out-of-pocket medical expenses, emotional distress, and past lost wages. Zatuchni v. Sec’y of Health & Human Servs., No. 94-58V, 2006 WL 1499982, at \*19-26 (Fed. Cl. Spec. Mstr. May 10, 2006).

The United States Court of Federal Claims vacated the portion of the special master’s decision that limited Ms. Zatuchni’s award to \$250,000. The Court held that Ms. Zatuchni could recover expenses in addition to the \$250,000 death award and awarded her \$554,323.90. The amount of \$554,323.90 “consist[s] of \$174,880.49 in actual reimbursable expenses, \$250,000 for pain and suffering, and \$129,443.41 in lost earnings.” Zatuchni ex rel. Estate of Snyder v. Sec’y of

Health & Human Servs., 73 Fed. Cl. 451, 452 (2006). The Secretary appealed to the Federal Circuit the award of items beyond the death benefit award.

Before the Federal Circuit in Zatuchini, the Secretary argued that the Vaccine Act links certain types of petitioners to specific forms of relief, meaning an estate of a person who died from a vaccine-related injury could recover only damages (\$250,000) for that death. The Federal Circuit rejected that argument. The Federal Circuit stated that § 11(b)(1)(A) defining a petitioner inter alia as one who represents a person who died from a vaccine-related injury “plainly does not dictate that a properly filed petition by the estate of a person who suffered both vaccine-related injuries and a vaccine-related death (and thus had standing to file under § 300aa-11(b)(1)(A)) may not contain a request for any and all of the types of compensation listed in § 300aa-15(a).”<sup>1</sup> Zatuchni, 516 F.3d at 1321. The Federal Circuit explained:

[T]he fact that a vaccine-related death followed a vaccine-related injury in a particular case does not alter the fact that certain expenses were incurred, wages lost, or pain and suffering endured in the interim, and these damages are no less related to or caused by a vaccine-related injury within the meaning of subsections (a)(1), (3), and (4) simply because the vaccine-injured person in question is no longer living. Id. § 300-15(a). Thus, it is in no way inconsistent with the text of 42 U.S.C. § 300aa-15(a) to award compensation under subsections (a)(1), (3), and (4) for damages that “resulted from” or were sustained “by reason of” a vaccine-related injury in addition to the death benefit provided for under subsection (a)(2) “[i]n the event of a vaccine-related death.” Id. To the contrary, this is the reading of § 300aa-15(a) that most naturally flows from its text and structure.

Zatuchni, 516 F.3d at 1318-19 (footnote omitted).

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<sup>1</sup> This statement essentially defeats the Secretary’s arguments that the Graveses lack standing. See Resp’t Resp. at 2-3.

Here, Zatuchni controls. The Federal Circuit examined §15(a) thoroughly, and permitted an estate to recover more than just the \$250,000 death benefit. The Federal Circuit allowed the estate to receive compensation for the injuries that Ms. Snyder endured. The same result follows here. The Graveses, as legal representatives of the estate of their deceased daughter Hayley, are entitled to the \$250,000 death award, as governed by § 300aa-15(a)(2), as well as compensation for Hayley’s pain and suffering, provided for by § 300aa-15(a)(4).

The Secretary’s argument characterizing the language of Zatuchni as mere dicta is not persuasive. Dicta “are ‘statements made by a court that are ‘unnecessary to the decision in the case, and therefore[,] not precedential (although [they] may be considered persuasive).’” Nat’l Amer. Insurance Co. v. United States, 498 F.3d 1301, 1306 (Fed. Cir. 2007) (quoting Co-Steel Raritan, Inc. v. Int’l Trade Comm’n, 357 F.3d 1294, 1307 (Fed. Cir. 2004) (quoting Black’s Law Dictionary 1100 (7th ed. 1999)).

The Secretary contends that Zatuchni held that an estate may recover for injuries caused by a vaccine in the context of a case in which an injured person (there Ms. Snyder) filed the petition. The Secretary distinguishes the Graveses’ case because the Graveses have always been acting as the representatives of Hayley’s estate. See Resp’t Resp.

However, the Secretary’s effort to confine Zatuchni to its exact procedural circumstances is not at all in accord with the broad language of Zatuchni. Although the Secretary is correct that the procedural history of Zatuchni differs from the procedural history in this case, the Secretary has not persuasively explained why the difference affects the outcome. If there is a distinction to be drawn between the amount an estate can recover when the estate’s representatives file the petition initially and the amount an estate can recover when it is substituted in an already pending action, the Federal Circuit should draw that line. See Althen v. Sec’y of Health & Human Servs., 418 F.3d 1274, 1280 (Fed. Cir. 2005) (“The special master’s role is to apply the law.”).

Allowing the Graveses to recover for Hayley’s pain and suffering is in accord with the special master’s reasoning in Griglock v. Sec’y of Health & Human Servs. In Griglock, the special master stated that “the Federal Circuit made clear in its interpretation of the damages section of the Act, § 15, that areas of compensation for injuries and deaths, to an otherwise qualified petitioner, are not

exclusive of each other.” Griglock v. Sec’y of Health & Human Servs., No. 09-275V, 2011 WL 839738, at \*7 n.8 (Fed. Cl. Spec. Mstr. Feb. 11, 2011), mot. for review denied, 99 Fed. Cl. 373 (2011), appeal docketed, No. 2011-5134 (Fed. Cir. Sept. 29, 2011).

### CONCLUSION

For the reasons explained above, the Graveses motion for summary judgment requesting compensation for both a death benefit award and a pain and suffering award, is GRANTED. To resolve the amount of compensation to which the Graveses are entitled, they shall submit a brief on this issue by **Tuesday, February 7, 2012.**<sup>2</sup>

IT IS SO ORDERED.

S/Christian J. Moran  
Christian J. Moran  
Special Master

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<sup>2</sup> The Graveses have waived their request for an in-person hearing. The Secretary declined the opportunity to submit a brief regarding the appropriate amount of compensation for pain and suffering. See Order, dated Jan. 23, 2012.