

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

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KIMBERLY JORDAN as the Mother \*  
of and as the administrator of the Estate \*  
of KHAMIIYA C. JOHNSON, \*

Petitioner, \*

v. \*

SECRETARY OF HEALTH \*  
AND HUMAN SERVICES, \*

Respondent. \*

\*\*\*\*\*

No. 08-659V  
Special Master Christian J. Moran

Filed: February 9, 2011

Stipulation; diphtheria-tetanus-  
acellular pertussis; haemophilus  
influenzae type B; inactivated  
poliovirus; pneumococcal conjugate  
vaccines; encephalopathy; death

### UNPUBLISHED DECISION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

John F. McHugh, Esq., Law Office of John McHugh, New York, NY, for Petitioner;  
Katherine C. Esposito, Esq., U.S. Department of Justice, Washington, D.C., for Respondent.

On February 7, 2011, the parties filed a joint stipulation concerning the petition for compensation filed by Kimberly Jordan, as the mother of and administrator of the estate of Khamiyah C. Johnson (Khamiyah), on September 17, 2008. In her petition, Ms. Jordan alleged that her daughter's receipt of the diphtheria-tetanus-acellular pertussis ("DTaP"), haemophilus influenzae type B ("Hib"), inactivated poliovirus ("IPV"), and pneumococcal conjugate ("PCV") vaccines, which are contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. §100.3(a), and which Khamiyah received on September 13, 2006, caused Khamiyah to suffer an adverse reaction, which caused an encephalopathy and resulted in Khamiyah's death on September 20, 2006.

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 Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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

Respondent denies that one or more of the vaccines Khamiyah received on September 13, 2006 caused her to suffer an encephalopathy and/or any other injury, and denies that Khamiyah's death occurred as the result of a vaccine-related injury.

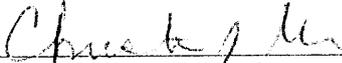
Nevertheless, the parties agree to the joint stipulation, attached hereto as Appendix A. The undersigned finds said stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

Damages awarded in that stipulation include:

- A. A lump sum payment of \$125,000.00 in the form of a check payable to petitioner as mother and administratrix of the Estate of Khamiyah C. Johnson. 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 8-659V 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.

  
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Christian J. Moran  
Special Master

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

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KIMBERLY JORDAN, as the mother and )  
administratrix for the estate of )  
KHAMIYAH C. JOHNSON, )  
) )  
Petitioner, )  
) )  
v. )  
) )  
SECRETARY OF HEALTH AND )  
HUMAN SERVICES, )  
) )  
Respondent. )  
\_\_\_\_\_ )

No. 08-659V  
Special Master Moran

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of the Estate of Khamiyah C. Johnson (“Khamiyah”), deceased, petitioner Kimberly Jordan, Khamiyah’s mother, 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 resulting in death, allegedly related to Khamiyah’s receipt of the diphtheria-tetanus-acellular pertussis (“DTaP”), haemophilus influenzae type B (“Hib”), inactivated poliovirus (“IPV”), and pneumococcal conjugate (“PCV”) vaccines, which are contained on the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3 (a).
2. Khamiyah received the aforementioned immunizations on September 13, 2006.
3. The vaccines were administered within the United States.
4. Petitioner alleges that Khamiyah had an adverse reaction to one or more of the vaccines she received, which caused an encephalopathy and Khamiyah’s death on September 20, 2006.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of the Estate of Khamiyah C. Johnson as a result of Khamiyah's alleged condition, resulting in death.

6. Respondent denies that one or more of the vaccines Khamiyah received on September 13, 2006, caused her to suffer an encephalopathy and/or any other injury, and denies that Khamiyah's death occurred as the result of a vaccine-related injury.

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 petitioner has 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 of \$125,000.00 in the form of a check payable to petitioner as mother and administratrix of the Estate of Khamiyah C. Johnson. 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 petitioner has 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. Payment 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.

11. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as executrix/administratrix of the Estate of Khamiyah C. Johnson under the laws of the Commonwealth of Pennsylvania. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as executrix/administratrix of the Estate of Khamiyah C. Johnson. If petitioner is not authorized by a court of competent jurisdiction to serve as executrix/administratrix of the Estate of Khamiyah C. Johnson 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 executor/administrator of the Estate of Khamiyah C. Johnson upon submission of written documentation of such appointment to the Secretary.

12. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity and as administratrix of the Estate of Khamiyah C. Johnson, on behalf of herself and her 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. § 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 Khamiyah resulting from, or alleged to

have resulted from, the vaccinations administered on or about September 13, 2006, as alleged by petitioner in a petition for vaccine compensation filed on or about September 17, 2008, in the United States Court of Federal Claims as petition No. 08-659V.

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, 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.

15. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that one or more of the vaccines received by Khamiyah on September 13, 2006, caused her to suffer an encephalopathy and/or any other injury, or that Khamiyah's death occurred as a result of a vaccine-related injury.

16. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns, as legal representatives of the Estate of Khamiyah C. Johnson.

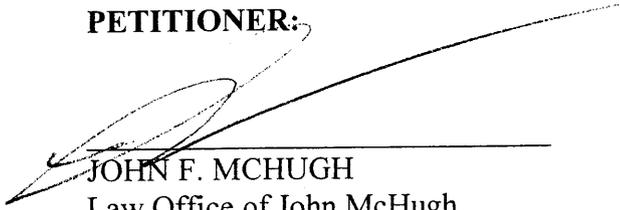
END OF STIPULATION

Respectfully submitted,

**PETITIONER:**

  
KIMBERLY JORDAN

**ATTORNEY OF RECORD FOR  
PETITIONER:**

  
JOHN F. MCHUGH  
Law Office of John McHugh  
6 Water Street  
Suite 401  
New York, NY 10004  
(212) 483-0875

**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

Dated: 2/4/11

**AUTHORIZED REPRESENTATIVE  
OF THE ATTORNEY GENERAL:**

  
MARK W. ROGERS  
Deputy Director  
Torts Branch  
Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, DC 20044-0146

**ATTORNEY OF RECORD FOR  
RESPONDENT:**

  
KATHERINE C. ESPOSITO  
Trial Attorney  
Torts Branch  
Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, DC 20044-0146  
(202) 514-9729