

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

JACOB PETERSON and	*	
KATHRYN PETERSON, legal	*	
representatives of a minor child,	*	No. 11-807V
LIAM PETERSON,	*	Special Master Christian J. Moran
	*	
	*	Filed: October 2, 2012
Petitioners,	*	
	*	
v.	*	Stipulation; polio; Diphtheria,
	*	Tetanus, Pertussis; Rotavirus;
SECRETARY OF HEALTH	*	Haemophilus influenza type b;
AND HUMAN SERVICES,	*	Pneumococcal conjugate vaccine;
	*	immobile, flaccid legs.
Respondent.	*	

UNPUBLISHED DECISION¹

Glenn E. Tremper, Glenn E. Tremper, PLLC, Great Falls, MT, for Petitioners;
Gordon E. Shemin, U.S. Department of Justice, Washington, D.C., for Respondent.

On October 1, 2012, the parties filed a joint stipulation concerning the petition for compensation filed by Jacob and Kathryn Peterson, as legal representatives of their son, Liam Peterson (“Liam”), on December 1, 2011. In their petition, the petitioners alleged that the Polio (IPV) vaccine; the Diphtheria, Tetanus, and Pertussis vaccine; the Rotavirus vaccine; the Haemophilus influenza type b vaccine; and the Pneumococcal conjugate vaccine, which are contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a), and which Liam received on or about December 3, 2008, caused Liam to develop immobile, flaccid legs, the effects of which lasted for more than six months.

¹ The E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002), requires that the Court post this decision on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

Respondent denies that the vaccines are the cause of Liam's immobile, flaccid legs, and/or any other 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 \$933.72, which amount represents compensation for past unreimbursable expenses, in the form of a check payable jointly to petitioners, Jacob and Kathryn Peterson. This amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a), except as set forth in (B);**
- B. An amount sufficient to purchase the annuity contract described in the attached stipulation below, paid to the life insurance company from which the annuity will be purchased.**

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 11-807V 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

Christian J. Moran
Special Master

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

_____)	
JACOB and KATHRYN PETERSON,)	
Legal representatives of a minor child,)	
Liam Peterson,)	
)	
Petitioners,)	
v.)	No. 11-807V
)	Special Master Moran
SECRETARY OF HEALTH AND)	ECF
HUMAN SERVICES,)	
)	
Respondent.)	
_____)	

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of their son, Liam Peterson (“Liam”), 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 Liam’s receipt of the Polio (IPV) vaccine; the Diphtheria, Tetanus, and Pertussis vaccine; the Rotavirus vaccine; the Haemophilus influenza type b vaccine; and the Pneumococcal conjugate vaccine (collectively, the “vaccines”), which are all vaccines contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3 (a).
2. Liam received the vaccines on or about December 3, 2008.
3. The vaccines were administered within the United States.
4. Petitioners allege that the vaccines caused Liam to develop immobile, flaccid legs, and that Liam 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 Liam as a result of his condition.

6. Respondent denies that the vaccines are the cause of Liam's immobile, flaccid legs, and/or any other 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 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 \$933.72, which amount represents compensation for past unreimbursable expenses, in the form of a check payable jointly to petitioners, Jacob and Kathryn Peterson. This amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a), except as set forth in paragraph 8.b.;

b. An amount sufficient to purchase the annuity contract described in paragraph 10 below, paid to the life insurance company from which the annuity will be purchased (the "Life Insurance Company").

9. The Life Insurance Company must have a minimum of \$250,000,000 capital and surplus, exclusive of any mandatory security valuation reserve. The Life Insurance Company must have one of the following ratings from two of the following rating organizations:

a. A.M. Best Company: A++, A+, A+g, A+p, A+r, or A+s;

b. Moody's Investor Service Claims Paying Rating: Aa3, Aa2, Aa1, or Aaa;

c. Standard and Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+, or AAA;

d. Fitch Credit Rating Company, Insurance Company Claims Paying Ability Rating: AA-, AA, AA+, or AAA.

10. The Secretary of Health and Human Services agrees to purchase an annuity contract from the Life Insurance Company for the benefit of Liam, pursuant to which the Life Insurance Company will agree to make payments periodically to Liam Peterson for all remaining damages that would be available under 42 U.S.C. §300aa-15(a) as follows:

- a. On August 28, 2026, a certain lump sum payment in the amount of \$12,740.60.
- b. On August 28, 2031, a certain lump sum payment in the amount of \$15,139.19.
- c. On August 28, 2036, a certain lump sum payment in the amount of \$18,254.97.

The certain payments provided in this paragraph 10 shall be made as set forth above. Should Liam Peterson predecease the exhaustion of the certain payments during the certain period specified above, any remaining payments shall be made to his estate. However, petitioners shall provide written notice to the Secretary of Health and Human Services and to the Life Insurance Company within twenty (20) days of Liam Peterson's death.

11. The annuity contract will be owned solely and exclusively by the Secretary of Health and Human Services and will be purchased as soon as practicable following the entry of a judgment in conformity with this Stipulation. The parties stipulate and agree that the Secretary of Health and Human Services and the United States of America are not responsible for the payment of any sums other than the amounts set forth in paragraph 8 herein and the amounts awarded pursuant to paragraph 12 herein, and that they do not guarantee or insure any of the future annuity payments. Upon the purchase of the annuity contract, the Secretary of Health and Human Services and the United States of America are released from any and all obligations with respect to future annuity payments.

12. 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.

13. Petitioners and their attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any 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 by entities that provide health services on a pre-paid basis.

14. Payments made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 12 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

15. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs, and past unreimbursable expenses, the money provided pursuant to this Stipulation either immediately or as part of the annuity contract, will be used solely for the benefit of Liam 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).

16. In return for the payments described in paragraphs 8 and 12, petitioners, in their individual capacities and as legal representatives of Liam, on behalf of themselves, Liam, 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 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 Liam resulting from, or alleged to have resulted from, the vaccines administered on December 3, 2008, as alleged by petitioners in a petition for vaccine compensation filed on or about December 1, 2011, in the United States Court of Federal Claims as petition No. 11-807V.

17. If Liam 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.

18. 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.

19. 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 12 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.

20. Petitioners hereby authorize respondent to disclose documents filed by petitioners in this case consistent with the Privacy Act and the routine uses described in the National Vaccine

Injury Compensation Program System of Records, No. 09-15-0056.

21. 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 Liam's immobile, flaccid legs or any other injury.

22. All rights and obligations of petitioners hereunder shall apply equally to petitioners' heirs, executors, administrators, successors, and/or assigns as legal representatives of Liam Peterson.

END OF STIPULATION

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

Respectfully submitted,

PETITIONER:


JACOB PETERSON

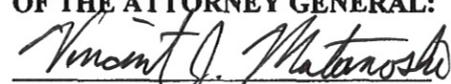
PETITIONER:


KATHRYN PETERSON

**ATTORNEY OF RECORD FOR
PETITIONERS:**


GLENN E. TREMPER, ESQ.
GLENN E. TREMPER, PLLC
300 River Drive North, Suite 5
P.O. Box 2263
Great Falls, MT 59403
(406) 761-9400

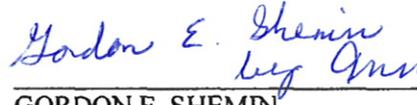
**AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:**


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:**


GORDON E. SHEMIN
Trial Attorney
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
(202) 616-4208

Dated: October 1, 2012