

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

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MARISOL LEDESMA TIRADOR, \*  
as the Parent and Natural Guardian of \*  
PAOLA MELISSA CARBO LEDESMA, \*  
an Infant, \*

Petitioner, \*

v. \*

SECRETARY OF HEALTH \*  
AND HUMAN SERVICES, \*

Respondent. \*

\*\*\*\*\*

No. 12-192V  
Special Master Christian J. Moran

Filed: October 29, 2013

Stipulation; varicella vaccine;  
hepatitis A vaccine; chronic  
idiopathic thrombocytopenic  
purpura; ITP.

Mark T. Sadaka, Mark T. Sadaka, MSPH, Esq., Englewood, NJ, for petitioner.  
Jennifer L. Reynaud, United States Department of Justice, Washington, D.C., for respondent.

### UNPUBLISHED DECISION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

On October 25, 2013, respondent filed a joint stipulation concerning the petition for compensation filed by Marisol Ledesma Tirador on March 26, 2012. In her petition, petitioner alleged that the varicella and hepatitis A vaccines, which are contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a), and which her child, Paola, received on March 10, 2010, caused Paola to suffer chronic idiopathic thrombocytopenic purpura (“ITP”). Petitioner further alleges that Paola suffered the residual effects of this injury for more than six months. Petitioner represents that there has been no prior award or settlement of a civil action for damages on her behalf as a result of her condition.

Respondent denies that Paola’s alleged injury and residual effects were caused-in-fact by either the varicella vaccine or the hepatitis A vaccine. Respondent further denies that either the varicella vaccine or the hepatitis A vaccine caused Paola any other injury or her current condition.

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<sup>1</sup> 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.

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 lump sum payment of \$75,000.00 in the form of a check payable to petitioner as the Guardian/Conservator of the estate of Paola Melissa Carbo Ledesma, for the benefit of Paola Melissa Carbo Ledesma. 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 12-192V according to this decision and the attached stipulation.<sup>2</sup>

Any questions may be directed to my law clerk, Tucker McCarthy, at (202) 357-6392.

**IT IS SO ORDERED.**

s/Christian J. Moran  
Christian J. Moran  
Special Master

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<sup>2</sup> Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.

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OFFICE OF SPECIAL MASTERS

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Parent and Natural Guardian of  
PAOLA MELISSA CARBO LEDESMA,  
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Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent

No. 12-192V  
Special Master Moran  
ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of her minor daughter, Paola Melissa Carbo Ledesma ("Paola"), petitioner Marisol Ledesma Tirador 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 Paola's receipt of the varicella and hepatitis A vaccinations, which vaccines are contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Paola received her varicella and hepatitis A immunizations on March 10, 2010.
3. The vaccines were administered within the United States.
4. Petitioner alleges that Paola sustained a vaccine-related injury diagnosed as chronic idiopathic thrombocytopenic purpura ("ITP") that was caused-in-fact by the varicella and/or

hepatitis A vaccines. She further alleges that Paola experienced the residual effects of her injury for more than six months.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of Paola as a result of her condition.

6. Respondent denies that Paola's alleged injury and residual effects were caused-in-fact by either the varicella or hepatitis A vaccine. Respondent further denies that the either varicella or hepatitis A vaccine caused Paola any other injury or her current condition.

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 \$75,000.00 in the form of a check payable to petitioner as the Guardian/Conservator of the estate of Paola Melissa Carbo Ledesma, for the benefit of Paola Melissa Carbo Ledesma. 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. Petitioner and her 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.

11. Payments made pursuant to paragraphs 8 and 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, litigation costs, and past unreimbursable expenses, the money provided pursuant to this Stipulation will be used solely for the benefit of Paola Melissa Carbo Ledesma, 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. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as guardian/conservator of Paola Melissa Carbo Ledesma's estate under the laws of the State of Florida. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as guardian/conservator of Paola's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian/conservator of Paola'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 guardian/conservator of Paola's estate upon submission of written documentation of such appointment to the Secretary.

14. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity, and as legal representative of Paola Melissa Carbo Ledesma, on behalf of 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. § 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 Paola resulting from, or alleged to have resulted from a varicella or hepatitis A vaccination administered on March 10, 2010, as alleged by petitioner in a petition for vaccine compensation filed on or about March 26, 2012, in the United States Court of Federal Claims as petition No. 12-192V.

15. If Paola Melissa Carbo Ledesma 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.

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 either the varicella or hepatitis A vaccine caused Paola Melissa Carbo Ledesma to suffer chronic ITP or any other injuries.

19. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns, as legal representatives of Paola Melissa Carbo Ledesma.

END OF STIPULATION

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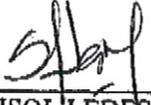
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Respectfully submitted,

**PETITIONER:**



MARISOL LEDESMA TIRADOR

**ATTORNEY OF RECORD FOR  
PETITIONER:**



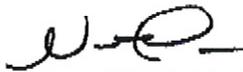
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Dated: Oct. 25, 2013