

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

MASON VAIR, by his parents, *
RUTH J. GARZIA and RYAN I. VAIR, *
Petitioners, *

No. 09-233V
Special Master Christian J. Moran
Filed: September 21, 2011

v. *
SECRETARY OF HEALTH *
AND HUMAN SERVICES, *
Respondent. *

Stipulation; measles, mumps,
and rubella; diphtheria-tetanus-
acellular pertussis; haemophilus
influenzae type b; Prevnar vaccine

UNPUBLISHED DECISION¹

Michael G. McLaren, Black & McLaren, Memphis, TN, for Petitioner;
Lisa A. Watts, U.S. Department of Justice, Washington, D.C., for Respondent.

On September 20, 2011, the parties filed a joint stipulation concerning the petition for compensation filed by Ruth J. Garzia and Ryan I. Vair, on behalf of their son Mason Vair ("Mason"), on April 15, 2009. In their petition, the petitioners alleged that the measles, mumps, and rubella ("MMR") vaccine, diphtheria-tetanus-acellular pertussis ("DTaP") vaccine, haemophilus influenzae type b ("HIB") vaccine, and Prevnar vaccine, which are contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. §100.3(a), and which Mason received on May 12, 2006, caused Mason to develop gastroenteritis, dehydration, idiopathic thrombocytopenic purpura, and developmental delay, the effects of which lasted for more than six months.

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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 Mason's claimed injuries were caused by the DTaP, MMR, HIB, and/or Prevnar vaccines, and denies that his current disabilities are sequelae of his alleged injuries.

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 \$48,000.00 in the form of a check payable to petitioners as guardians/conservators of Mason's estate. This amount represents compensation for all elements of compensation under 42 U.S.C. §300aa-15(a) to which petitioners would be entitled on Mason's behalf.**

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 9-233V 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

MASON VAIR, by his parents, RUTH J. GARZA and RYAN I. VAIR,)	
)	
Petitioners,)	<u>ECF</u>
v.)	No. 09-233V
)	Special Master
SECRETARY OF HEALTH AND HUMAN SERVICES,)	Christian J. Moran
)	
Respondent.)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Ruth J. Garza and Ryan I. Vair ("petitioners"), filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34, as amended (the "Vaccine Program"), on behalf of their minor son, Mason Vair ("Mason"). The petition seeks compensation for injuries allegedly related to Mason's receipt of measles, mumps, and rubella ("MMR") vaccine, diphtheria-tetanus-acellular pertussis ("DTaP") vaccine, haemophilus influenzae type b ("HIB") vaccine, and Prevnar vaccine, which vaccines are contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. Mason received the vaccines on May 12, 2006.
3. The vaccines were administered within the United States.
4. Petitioners allege that Mason developed severe gastroenteritis, dehydration, idiopathic thrombocytopenic purpura ("TTP"), and developmental delay, which were caused by the vaccines. Petitioners further allege that Mason suffered residual effects of his injuries for more than six months.

5. Petitioners represent that there has been no prior award or settlement of a civil action for damages on Mason's behalf as a result of his condition.

6. Respondent denies that Mason's claimed injuries were caused by the DTaP, MMR, Hib, and/or Prevnar vaccines, and denies that his current disabilities are sequelae of his alleged injuries.

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 of \$48,000.00 in the form of a check payable to petitioners as guardians/conservators of Mason's estate. This amount represents compensation for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which petitioners would be entitled on Mason's behalf.

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. 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.

11. Payments 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.

12. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs, the money provided pursuant to this Stipulation will be used solely for Mason's benefit 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. Petitioners represent that they presently are, or within 90 days of the date of judgment will become, duly authorized to serve as guardians/conservators of Mason's estate under the laws of the State of California. No payments pursuant to this Stipulation shall be made to petitioners until petitioners provide the Secretary with documentation establishing their appointment as guardians/conservators of Mason's estate. If petitioners are not authorized by a court of competent jurisdiction to serve as guardians/conservators of the estate of Mason Vair at the time 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 guardians/conservators of the estate of Mason Vair upon submission of written documentation of such appointment to the Secretary.

14. In return for the payments described in paragraph 8 and 9, petitioners, in their

individual capacities and as legal representatives of Mason, on behalf of themselves, Mason, and his heirs, executors, administrators, successors or assigns, do forever irrevocably and unconditionally release, acquit and discharge the United States of America 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, 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 personal injuries to or death of Mason Vair resulting from, or alleged to have resulted from, the MMR, DTaP, HIB, and Prevnar vaccines administered on May 12, 2006, as alleged by petitioners in a petition for vaccine compensation filed on April 15, 2009, in the United States Court of Federal Claims as petition No. 09-233V.

15. If Mason 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.

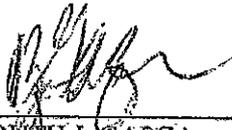
18. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the vaccines administered to Mason on May 12, 2006, caused his injuries, or that Mason's current disabilities are sequelae of his alleged vaccine-related injuries.

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

END OF STIPULATION

Respectfully submitted,

PETITIONERS:



RUTH I. GARZA



RYAN I. VAIR

**ATTORNEY OF RECORD FOR
PETITIONERS:**



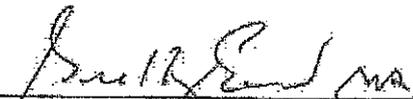
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Dated: 09-20-2011