

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

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JANE WELSH and BRIAN WELSH, \*  
Parents and Natural Guardians of \*  
CAMERON WELSH, a Minor, \*

Petitioners, \*

v. \*

SECRETARY OF HEALTH \*  
AND HUMAN SERVICES, \*

Respondent. \*

\*\*\*\*\*

No. 11-656V  
Special Master Christian J. Moran  
Filed: February 22, 2013  
Stipulation;  
measles, mumps, rubella [“MMR”] vaccine;  
attorneys’ fees and costs.

Todd M. Rubin, Esq., Finz & Finz, P.C., Mineola, NY, for Petitioners;  
Justine E. Daigneault, U.S. Department of Justice, Washington, D.C., for Respondent.

### UNPUBLISHED DECISION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

On February 20, 2013, the parties filed a joint stipulation concerning the petition for compensation filed by Jane and Brian Welsh. In their petition, Mrs. and Mr. Welsh allege that the measles, mumps, rubella [“MMR”] vaccine, which is listed in the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a), and which their minor son, Cameron Welsh [“Cameron”], received on March 11, 2010, caused him to suffer the onset of arthritis within the period set forth in the Table.<sup>2</sup> Petitioners further allege that Cameron experienced residual effects of his injury for more than six months. Petitioners represents that there has been no prior award or settlement of a civil action for damages on Cameron’s behalf as a result of his condition.

Respondent denies that Cameron suffered the onset of arthritis within the time period set forth in the Table, denies that the MMR or pneumococcal conjugate vaccines caused his alleged arthritis, arthritic condition, or any other injury or his current condition, and denies that Cameron experienced the residual effects of his injury for more than six months.

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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.

<sup>2</sup> Cameron also received the pneumococcal conjugate vaccine on March 11, 2010.

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 and attorneys' fees and costs, on the terms set forth therein.

Compensation awarded in that stipulation includes:

- A. A lump sum payment of \$40,000.00 in the form of a check payable to petitioners as guardians/conservators of Cameron's estate. This amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a); and**
- B. A lump sum of \$18,200.00 in the form of a check payable jointly to petitioners and petitioners' attorney, Todd M. Rubin, for attorneys' fees and costs available under 42 U.S.C. §300aa-15(e), and, in compliance with General Order #9, no out-of-pocket expenses were incurred by petitioners in proceeding on the petition.**

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 11-656V according to this decision and the attached stipulation.<sup>3</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>3</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.

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

JANE WELSH and BRIAN WELSH, )  
Parents and Natural Guardians of )  
CAMERON WELSH, a Minor, )  
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Petitioners, )  
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v. )  
 )  
SECRETARY OF HEALTH AND )  
HUMAN SERVICES, )  
 )  
Respondent. )

No. 11-656V  
Special Master Moran  
ECF

**STIPULATION**

The parties hereby stipulate to the following matters:

1. On behalf of their son, Cameron Welsh ("Cameron"), 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 Cameron's receipt of the Measles-Mumps-Rubella ("MMR") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. Cameron received MMR and Pneumococcal conjugate immunizations on March 11, 2010.
3. The vaccines were administered within the United States.
4. Petitioners allege that Cameron sustained the first symptom or manifestation of the onset of arthritis within the time period set forth in the Table. Petitioners further allege that Cameron's arthritic condition was caused-in-fact by the MMR vaccine, and that he experienced residual effects of his 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 Cameron as a result of his condition.

6. Respondent denies that Cameron suffered the onset of arthritis within the time period set forth in the Table; denies that the MMR or Prevnar vaccines caused his alleged arthritis, arthritic condition, or any other injury or his current condition; and denies that Cameron experienced the residual effects of his injury for more than six months.

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 \$40,000.00 in the form of a check payable to petitioners as guardians/conservators of Cameron's estate. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a); and

b. A lump sum of \$18,200.00 in the form of a check payable jointly to petitioners and petitioners' attorney, Todd M. Rubin, for attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e), and, in compliance with General Order #9, no out-of-pocket expenses were incurred by petitioners in proceeding on the petition.

9. 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.

10. Payments made pursuant to paragraph 8 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. 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 Cameron 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).

12. 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 Cameron's estate under the laws of the State of Florida. No payments pursuant to this Stipulation shall be made until petitioners provide the Secretary with documentation establishing their appointment as guardians/conservators of Cameron's estate. If petitioners are not authorized by a court of competent jurisdiction to serve as guardians/conservators of the estate of Cameron Welsh 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 the estate of Cameron Welsh upon submission of written documentation of such appointment to the Secretary.

13. In return for the payments described in paragraph 8, petitioners, in their individual capacity and as legal representatives of Cameron, on behalf of themselves, Cameron, 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 Cameron resulting from, or alleged to have resulted from, the MMR and Pneumococcal conjugate vaccinations administered on March 11, 2010, as alleged by petitioners in a petition for vaccine compensation filed on or about October 11, 2011, in the United States Court of Federal Claims as petition No. 11-656V.

14. If Cameron 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.

15. 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.

16. 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. 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.

17. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that Cameron suffered the onset of arthritis within the time period set forth in the Table; that the MMR or Pneumococcal conjugate vaccines caused his alleged arthritis or any other injury or his current condition; or that Cameron experienced the residual effects of this injury for more than six months.

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

END OF STIPULATION

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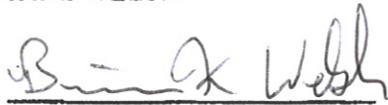
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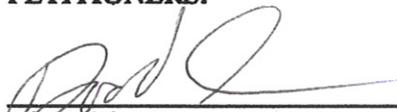
Respectfully submitted,

**PETITIONERS:**

  
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JANE WELSH

  
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BRIAN WELSH

**ATTORNEY OF RECORD FOR  
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Dated: February 20, 2013