

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 05-700 V

Filed: October 28, 2009

Not for publication

JOHN A. DOUGHERTY,

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Petitioner,

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v.

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SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

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Respondent.

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Damages decision based on
stipulation; Mumps-Measles-Rubella
("MMR") vaccine, arthritis,
myalgias, arthralgias

Robert T. Moxley, Cheyenne, WY, for petitioner.

Michael P. Milmo, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION AWARDING DAMAGES¹

On October 28, 2009, the parties filed the attached stipulation, in which they agreed to settle this case and described the settlement terms. Petitioner alleged that he suffered arthritis, myalgias, and arthralgias related to his receipt of a Mumps-Measles-Rubella ("MMR") vaccine. Respondent denies that petitioner's arthritis, myalgias, and arthralgias were caused in fact by his MMR vaccination. Nonetheless, the parties agreed to resolve this matter informally.

The court hereby adopts the parties' said stipulation, attached hereto, and awards

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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). Vaccine Rule 18(b) states that 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 constitute a clearly unwarranted invasion of privacy. When such a decision is filed, petitioner has 14 days to identify and move to delete such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access.

compensation in the amount and on the terms set forth therein. Pursuant to the stipulation, the court awards:

- a. a lump sum of **\$107,500.00** in the form of a check made payable to petitioner.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.²

IT IS SO ORDERED.

Dated: October 28, 2009

s/ Laura D. Millman
Laura D. Millman
Special Master

² Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.

THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

JOHN A. DOUGHERTY,

Petitioner,

v.

SECRETARY OF HEALTH AND HUMAN
SERVICES,

Respondent.

No. 05-700V

Special Master Millman

STIPULATION

It is hereby stipulated by and between the parties, the following matters:

1. Petitioner, John A. Dougherty, filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 *et seq.* (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to his receipt of a Mumps-Measles-Rubella ("MMR") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3.
2. Petitioner received his immunization on July 2, 2002.
3. The vaccine was administered within the United States.
4. Petitioner alleges that he suffered arthritis, myalgias, and arthralgias, which were caused-in-fact by the MMR vaccine he received on July 2, 2002. Petitioner also alleges that he suffers from on-Table arthritis.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on his behalf as a result of his condition.

6. Respondent denies that petitioner suffered the onset of arthritis, myalgias, and arthralgias as a result of the MMR vaccine, denies that petitioner suffered from on-Table arthritis, and denies that petitioner's current disabilities are caused by any vaccination he received.

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 \$107,500.00 in the form of a check payable to petitioner. This amount represents compensation for all damages 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 special master shall preside over further proceedings to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Payments made pursuant to paragraph 8 and any amount 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. The parties and their attorneys further agree and stipulate that the money provided pursuant to this Stipulation will be used solely for the benefit of petitioner, John A. Dougherty, 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. In return for the payments described in paragraphs 8 and 9, petitioner, in his individual capacity, and on behalf of his heirs, executors, administrators, successors or assigns, does forever and fully expressly release, acquit and discharge the Secretary of Health and Human Services and the United States of America from any and all actions, causes of action, agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature on account of, or in any way growing out of, any and all known or unknown personal injuries to or death of himself resulting from, or alleged to have resulted from, the MMR vaccine administered to him on July 2, 2002, as alleged by petitioner in a petition for vaccine compensation filed on June 27, 2005, in the United States Court of Federal Claims as petition No. 05-700V.

13. If petitioner should die prior to receiving the payment described in paragraph 8, this agreement shall be considered voidable upon proper notice to the Court on behalf of either or both of the parties.

14. 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 null and void at the sole discretion of either party.

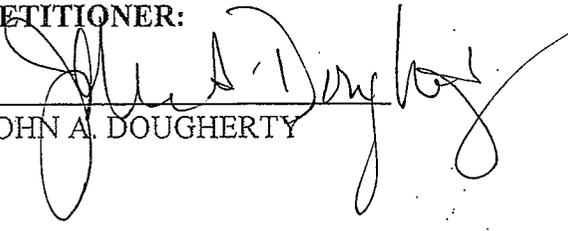
15. This Stipulation expresses a full and complete settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to.

16. All rights and obligations of petitioner hereunder shall apply equally to petitioner's successors and assigns.

END OF STIPULATION

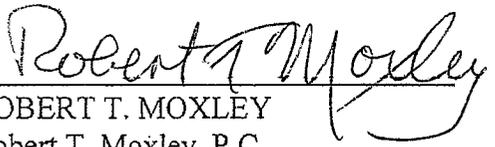
Respectfully submitted,

PETITIONER:



JOHN A. DOUGHERTY

**ATTORNEY OF RECORD FOR
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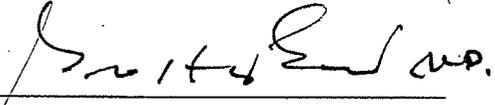
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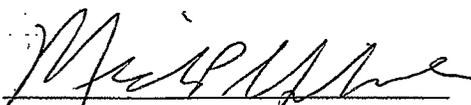
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Dated: October 28, 2009