

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 07-814V

Filed: June 15, 2009

Not for publication

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KIMBERLY ANN GEER, and RICHARD \*  
ROY RUSSELL, Jr., as Parents, Guardians \*  
and Next of Friends of RICHARD ROY \*  
RUSSELL, III, a minor, \*

Petitioners, \*

v. \*

SECRETARY OF THE DEPARTMENT \*  
OF HEALTH AND HUMAN SERVICES, \*

Respondent. \*

\*\*\*\*\*

Erin Adele Juzapavicus, Jacksonville, FL, for petitioner.

Glenn A. MacLeod, Washington, DC, for respondent.

**MILLMAN, Special Master**

### DECISION AWARDING DAMAGES<sup>1</sup>

On June 12, 2009, the parties filed the attached Stipulation, in which they agreed to settle this case and described the settlement terms. Petitioners alleged that Richard Roy Russell, III,

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<sup>1</sup> Because this decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this 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.

suffered from idiopathic thrombocytopenic purpura (“ITP”) following a Measles-Mumps-Rubella (“MMR”) vaccination. Based on the facts presented in this case, respondent conceded that petitioners satisfied all legal prerequisites for gaining compensation under the Vaccine Act on February 26, 2008. See Resp’t’s Rept. at 3, filed Feb. 26, 2008. The parties entered into settlement negotiations and filed the attached Stipulation on June 12, 2009. The undersigned has reviewed the Stipulation and finds the terms and conditions therein to be reasonable.

The court hereby adopts the parties’ said stipulation, attached hereto, and awards compensation in the amount and on the terms set forth therein. Pursuant to the stipulation, the court awards:

- a. A lump sum of **\$25,000.00** in the form of a check payable to petitioners as conservators of the estate of Richard Roy Russell, III, for past and future pain and suffering and future medical expenses; and
- b. A lump sum of **\$12,977.39** in the form of a check payable to petitioners as compensation for past unreimbursed vaccine-related medical expenses incurred on behalf of their son, Richard Roy Russell, III.

This amount represents compensation for all damages that would be available to petitioners under 42 U.S.C. §300aa-15(a).

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.<sup>2</sup>

**IT IS SO ORDERED.**

Dated: June 15, 2009

/s/ Laura D. Millman

Laura D. Millman  
Special Master

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<sup>2</sup> 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.

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

KIMBERLY ANN GEER, and	)	
RICHARD ROY RUSSELL, JR., as Parents,	)	
Guardians and Next of Friends of	)	
RICHARD ROY RUSSELL, III, a minor,	)	
	)	
Petitioners,	)	
	)	
v.	)	No. 07-814V
	)	Special Master
	)	LAURA D. MILLMAN
SECRETARY OF HEALTH	)	
AND HUMAN SERVICES,	)	
	)	
Respondent.	)	

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of their son, Richard Roy Russell, III ("Roy"), 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 Roy's receipt of a Measles-Mumps-Rubella ("MMR") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. Roy received an MMR immunization on November 22, 2004.
3. The vaccine was administered within the United States.
4. Petitioners alleges that Roy sustained the first symptom or manifestation of the onset of idiopathic thrombocytopenic purpura ("ITP") within the time period set forth in the Injury Table for MMR vaccine. They further allege that Roy suffered the residual effects or complications of his ITP illness for a period

of more than six months following the date of vaccination.

5. There is not a preponderance of the evidence demonstrating that Roy's condition is due to a factor unrelated to his November 22, 2004 MMR immunization.

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

7. Accordingly, Roy is entitled to compensation under the terms of the Vaccine Program. Therefore, 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, which represent compensation for all damages that would be available to petitioners under 42 U.S.C. §300aa-15(a):

a. A lump sum of \$25,000.00 in the form of a check payable to petitioners as conservators of the estate of Richard Roy Russell, III, for past and future pain and suffering and future medical expenses; and

b. A lump sum of \$12,977.39 in the form of a check payable to petitioners as compensation for past unreimbursed vaccine-related medical expenses incurred on behalf of their son, Richard Roy Russell, III.

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. 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.

11. The parties and their attorneys further agree and stipulate that, except for the amount stated in paragraph 8(b) and any award for attorneys' fees and litigation costs, the money provided pursuant to this Stipulation, will be used solely for the benefit of Roy 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 conservators of Richard Roy Russell, III's estate under the laws of the State of South Carolina. No payments pursuant to this Stipulation shall be made until petitioners provide the Secretary with documentation establishing their appointment as conservators of Richard Roy Russell, III's

estate. If petitioners are not authorized by a court of competent jurisdiction to serve as conservators of the estate of Richard Roy Russell III 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 conservator of the estate of Richard Roy Russell, III, 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 Roy, on behalf of himself, Roy, and his heirs, executors, administrators, successors or assigns, do 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 Roy resulting from, or alleged to have resulted from the MMR vaccination administered on November 22, 2004, as alleged by petitioners in a petition for vaccine compensation filed on November 21, 2007, in the United States Court of Federal Claims as petition No. 07-814V.

14. If Roy should die prior to receiving any or all of the payments 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.

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 null and void at the sole discretion of either party.

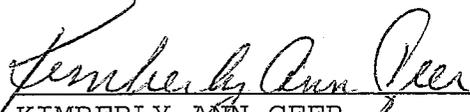
16. This Stipulation expresses a full and complete settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or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

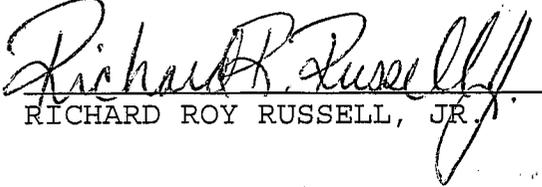
17. All rights and obligations of petitioners hereunder shall apply equally to their successors and assigns as legal representatives of Richard Roy Russell, III.

END OF STIPULATION

Respectfully submitted,

**PETITIONERS:**

  
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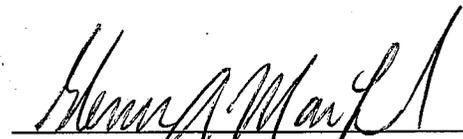
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Dated: 6/2/09