

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

ALEJANDRO PEREZ and GRISELLI *

PEREZ, parents of DANIEL PEREZ, *

deceased *

Petitioners, *

v. *

SECRETARY OF HEALTH *

AND HUMAN SERVICES, *

Respondent. *

No. 09-647V

Special Master Christian J. Moran

Filed: January 16, 2013

Stipulation; diphtheria-tetanus-acellular pertussis (DTaP), hepatitis B (Hep B), inactivated poliovirus (IPV), haemophilus influenza (Hib), pneumococcal conjugate (PCV), rotavirus vaccines; death

UNPUBLISHED DECISION¹

Ronald C. Homer, Conway, Homer & Chin-Caplan, P.C., Boston, MA, for Petitioners;
Claudia B. Gangi, U.S. Department of Justice, Washington, D.C., for Respondent.

On January 14, 2013, the respondent filed a joint stipulation concerning the petition for compensation filed by Alejandro and Griselli Perez on behalf of their son, Daniel Perez, deceased. In their petition, filed October 1, 2009, petitioners allege that Daniel's death resulted from receipt of diphtheria-tetanus-acellular pertussis ("DTaP"), hepatitis B ("Hep B"), inactivated poliovirus ("IPV"), haemophilus influenza ("Hib"), pneumococcal conjugate ("PCV") and/or rotavirus vaccines, which vaccines are contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. §100.3(a). Daniel received the above-named vaccines on October 1, 2007, and died on October 4, 2007. Petitioners represent that there has been no prior award or settlement of a civil action for damages on behalf of Daniel as a result of his death.

Respondent denies that the vaccines received by Daniel caused him to suffer any injury, or that his death occurred as the result of the vaccines.

¹The 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 \$152,500.00 in the form of a check payable to petitioners as legal representatives of the Estate of Daniel Perez. 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 09-647V according to this decision and the attached stipulation.

Any questions may be directed to my law clerk, Jay All, at (202) 357-6353.

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

ALEJANDRO PEREZ and GRISELLI
PEREZ, parents of DANIEL PEREZ,
deceased,

Petitioners,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 09-647V
Special Master Moran
ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of their son, Daniel Perez ("Daniel"), deceased, petitioners Alejandro Perez and Griselli Perez, 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 Daniel's death, alleging that his death resulted from receipt of diphtheria-tetanus-acellular pertussis ("DTaP"), hepatitis B ("Hep B"), inactivated poliovirus ("IPV"), haemophilus influenza ("Hib"), pneumococcal conjugate ("PCV") and/or rotavirus vaccines, which vaccines are contained in the Vaccine Injury Table (the "Table"), 42 C.F.R.

§ 100.3 (a).

2. Daniel received the vaccines on October 1, 2007.

3. The vaccines were administered within the United States.

4. Petitioners allege that Daniel died on October 4, 2007, as a result of the vaccinations he received.

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

6. Respondent denies that the vaccines received by Daniel caused him to suffer any injury; and denies that Daniel's death occurred as the result of the vaccines.

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 \$152,500.00 in the form of a check payable to petitioners as legal representatives of the Estate of Daniel Perez. 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 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. Payment 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. Petitioners represent that they presently are, or within 90 days of the date of judgment will become, duly authorized to serve as legal representatives of the Estate of Daniel Perez under the laws of the State of Florida.

12. In return for the payments described in paragraphs 8 and 9, petitioners, in their individual capacity and as legal representatives of the Estate of Daniel Perez, on their own behalf, and on behalf of Daniel's 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 Daniel Perez resulting from, or alleged to have resulted from, the vaccinations administered on or about October 1, 2007, as alleged by petitioners in a petition for vaccine compensation filed on or about October 1, 2009, in the United States Court of Federal Claims as petition No. 09-647V, in the United States Court of Federal Claims.

13. 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.

14. 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.

15. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the vaccines received by Daniel Perez caused him to suffer any injury or death or that Daniel's death occurred as the result of a vaccine-related injury.

16. All rights and obligations of petitioners hereunder shall apply equally to petitioners' heirs, executors, administrators, successors, and/or assigns as legal representatives of the Estate of Daniel Perez.

END OF STIPULATION

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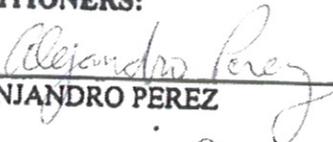
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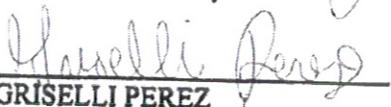
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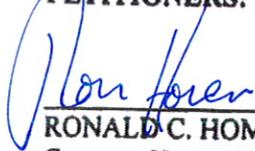
Respectfully submitted,

PETITIONERS:

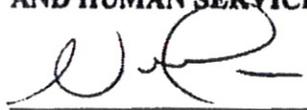

ALENJANDRO PEREZ


GRISELLI PEREZ

**ATTORNEY OF RECORD FOR
PETITIONERS:**

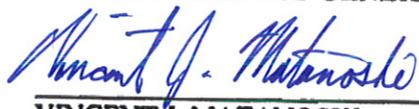

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Rule 83.1(c)(2)

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AND HUMAN SERVICES:**

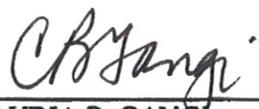

VITO CASERTA, M.D., M.P.H
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Director, Countermeasures Injury
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Dated: 1-14-13

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