

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 09-775V

Filed: March 8, 2012

TRACY JO HERMAN, as parent of	)	
LINCOLN KAUFFMAN, a minor,	)	
	)	NOT TO BE PUBLISHED
Petitioner,	)	
	)	
v.	)	
	)	Stipulation; Diphtheria-Tetanus-;
SECRETARY OF HEALTH	)	acellular Pertussis (DTaP) vaccine;
AND HUMAN SERVICES,	)	neurological injury and seizure
	)	disorder.
Respondent.	)	
	)	

Ronald C. Homer, Conway, Homer & Chin-Caplan, P.C., Boston, MA, for Petitioner.

Traci R. Patton, United States Dep't of Justice, Washington, D.C., for Respondent.

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

ZANE, Special Master.

On February 29, 2012, the parties in the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Petitioner, Tracy Jo Herman, on behalf of her son, Lincoln Kauffman ("Lincoln"), alleged that Lincoln sustained neurological injuries and a seizure disorder that were caused-in-fact by his receipt of the Diphtheria-Tetanus-acellular Pertussis (DTaP) vaccine on November 20, 2006, and which vaccine is contained in the Vaccine Injury Table, 42 C.F.R § 100.3(a). Ms. Herman also alleges that Lincoln experienced the residual effects of this injury for more than six months and that he has not otherwise received compensation for such injuries. Petitioner seeks compensation

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<sup>1</sup> The special master intends to post this decision on the website for the United States Court of Federal Claims 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. As provided by Vaccine Rule 18(b), each party has 14 days within which to request the redaction from this decision of any such alleged material. In the absence of a timely request, which includes a proposed redacted decision, the entire document will be made publicly available.

related to Lincoln's injuries pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 to 34.

Respondent denies that the vaccine caused any neurological injury, denies that Lincoln suffered a seizure disorder as sequela of the alleged injury and denies that Lincoln experienced the residual effects of any injury for more than six months. Nonetheless, the parties have agreed informally to resolve this matter. Stipulation, Appendix A hereto.

The court hereby ADOPTS the parties' said Stipulation, attached hereto as Appendix A, and awards compensation in the amount and on the terms set forth therein. Specifically, Petitioner is awarded:

**a lump sum of \$30,000.00, in the form of a check payable to Petitioner.**

This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a). The court thanks the parties for their cooperative efforts in resolving this matter. In the absence of a motion for review filed pursuant to RCFC, Appendix B, the Clerk is directed to enter judgment accordingly.<sup>2</sup>

**IT IS SO ORDERED.**

s/Daria J. Zane  
Daria J. Zane  
Special Master

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<sup>2</sup> This document constitutes a final "decision" in this case pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). Unless a motion for review of this decision is filed within 30 days, the Clerk of the Court shall enter judgment in accordance with this decision. 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

TRACY JO HERMAN, as parent of  
LINCOLN KAUFFMAN, a minor,

Petitioner,

v.

SECRETARY OF HEALTH AND HUMAN  
SERVICES,

Respondent.

No. 09-775V  
Special Master Zane  
ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of her son, Lincoln Kauffman ("Lincoln"), petitioner filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 to 34 (the "Vaccine Program"). An amended petition was filed on March 5, 2010. The amended petition seeks compensation for injuries allegedly related to Lincoln's receipt of the Diphtheria-Tetanus-acellular Pertussis ("DTaP") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Lincoln received DTaP, inactivated polio virus ("IPV"), and influenza ("flu") immunizations on November 20, 2006.
3. The vaccines were administered within the United States.
4. Petitioner alleges that Lincoln sustained the first symptom or manifestation of a neurological injury on or about November 23, 2006. She further alleges that he developed a

seizure disorder as sequela of this injury, and that Lincoln experienced residual effects of this injury for more than six months.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of Lincoln as a result of his condition.

6. Respondent denies that the vaccine caused any neurological injury; denies that Lincoln suffered a seizure disorder as sequela of the alleged injury; and denies that Lincoln experienced the residual effects of any 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 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 \$30,000.00 in the form of a check payable to petitioner. 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 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 parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioner and her 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 the benefit of Lincoln 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. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as guardian/conservator of Lincoln's estate under the laws of the State of Pennsylvania. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as guardian/conservator of Lincoln's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian/conservator of the estate of Lincoln Kauffman 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 Lincoln Kauffman upon submission of written documentation of such appointment to

the Secretary.

14. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity and as legal representative of Lincoln, on behalf of herself, Lincoln, and his heirs, executors, administrators, successors or assigns, does 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. § 300 aa-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 Lincoln resulting from, or alleged to have resulted from, any of the vaccinations administered on November 20, 2006, as alleged by petitioner in a petition for vaccine compensation filed on or about November 12, 2009, in the United States Court of Federal Claims as petition No. 09-775V.

15. If Lincoln 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 DTaP vaccine caused Lincoln to suffer a seizure disorder or any other injury or condition.

19. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns as legal representatives of Lincoln Kauffman.

END OF STIPULATION

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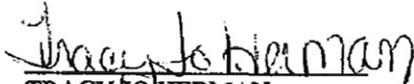
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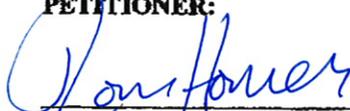
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Respectfully submitted,

**PETITIONER:**

  
TRACY JOHERMAN

**ATTORNEY OF RECORD FOR  
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 *by Joseph M. Pepper*  
*Rule 33.1(c)(2)*  
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Dated: 2-29-2012