

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 08-123V

Filed: January 6, 2009

Not for publication

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MADELINE W. HERRELL, as Mother and \*  
Natural Guardian of \*  
BRENTON BOONE \*

Petitioner, \*

v. \*

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

Respondent. \*

\*\*\*\*\*

Shiela A. Bjorklund, Minneapolis, MN, for petitioner.  
Lisa A. Watts, Washington, DC, for respondent.

Damages decision based on  
stipulation; ITP following MMR  
DTaP, and IPV vaccinations

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

On December 23, 2008, the parties filed the attached stipulation, in which they agreed to settle this case and described the settlement terms. Petitioner sought compensation for injuries to her minor son, Brenton Boone, including acquired immune thrombocytopenia purpura (“ITP”), allegedly caused by Brenton’s receipt of measles-mumps-rubella (“MMR”), diphtheria-tetanus-acellular pertussis (“DTaP”), and inactivated poliovirus (“IPV”) vaccinations. Respondent denies that Brenton’s ITP was caused in fact by the above-listed vaccinations. Nonetheless, the parties agreed to resolve this matter informally.

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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.

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 lump sum of **\$300,000.000**, in the form of a check jointly payable to petitioner, as the guardian/conservator of Brenton's estate, and to the Brenton Boone Settlement Preservation Trust. 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 of the court is directed to enter judgment herewith.<sup>2</sup>

**IT IS SO ORDERED.**

January 6, 2009  
DATE

/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

MADELINE W. HERRELL, as mother and  
natural guardian of, BRENTON BOONE,

Petitioner,

v.

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

Respondent.

**ECF**

**No. 08-123V**

**Special Master**

**Laura D. Millman**

STIPULATION

The parties hereby stipulate to the following matters:

1. On March 3, 2008, Madeline W. Herrell (“petitioner”), filed a petition for vaccine compensation on behalf of her minor son Brenton Boone (“Brenton”), under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to -34, as amended (the “Vaccine Program”). The petition seeks compensation for injuries, including acquired immune thrombocytopenia purpura (“ITP”), allegedly caused by Brenton’s receipt of measles-mumps-rubella (“MMR”) vaccine, diphtheria-tetanus-acellular pertussis (“DTaP”) vaccine, and inactivated poliovirus (“IPV”) vaccine, which are contained in the Vaccine Injury Table (the “Table”). 42 U.S.C. § 300aa-14(a)(I-V, VII); 42 C.F.R. § 100.3 (a)(I-V, VII).

2. Brenton received the MMR, DTaP, and IPV vaccines on May 4, 2005.

3. The vaccines were administered within the United States.

4. Petitioner alleges that over the next days and weeks, Brenton began to bruise easily.

Brenton was diagnosed with ITP on June 14, 2005. Petitioner alleges that MMR is known to cause ITP, and that Brenton’s ITP was caused-in-fact by the MMR vaccine administered on May

4, 2005.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on Brenton's behalf as a result of his alleged vaccine-related injury.

6. Respondent denies that the MMR, DTaP, or IPV vaccines caused Brenton's ITP.

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 files 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 **\$300,000.00**, in the form of a check jointly payable to petitioner, as the guardian/conservator of Brenton's estate, and to the Brenton Boone Settlement Preservation Trust. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

9. Payment 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.

10. The parties and their attorneys further agree and stipulate that, except for any award of attorney's fees and litigation costs, the money provided pursuant to this Stipulation will be used solely for the Brenton's benefit 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).

11. Petitioner represents that she is, or within 90 days of the date of judgment will become, duly authorized to serve as the guardian/conservator of Brenton's estate under the laws

of the State of Kansas. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as guardian/conservator of Brenton's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian/conservator of Brenton's estate at the time payment pursuant to paragraph 8 of this Stipulation is to be made, any such payment shall be paid jointly to the Brenton Boone Settlement Preservation Trust, and to the party or parties appointed by a court of competent jurisdiction to serve as guardian/conservator of the estate of Brenton Boone, upon submission of written documentation of such appointment to the Secretary.

12. In return for the payment described in paragraph 8, petitioner, in her individual capacity and as the guardian/conservator of the estate of Brenton Boone, on behalf of herself and Brenton's estate, 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 Brenton resulting from, or alleged to have resulted from the MMR, DTaP, and IPV vaccines administered to Brenton on May 4, 2005, as alleged by petitioner in a petition for vaccine compensation filed in the United States Court of Federal Claims on March 3, 2008, as Case No. 08-123V.

13. If Brenton should die prior to petitioner 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. 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 her successors and assigns as legal representatives of Brenton Boone.

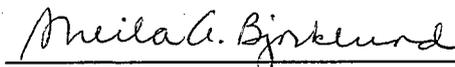
END OF STIPULATION

Respectfully submitted,

**PETITIONER:**

  
MADELINE W. HERRELL

**ATTORNEY OF RECORD FOR  
PETITIONER:**

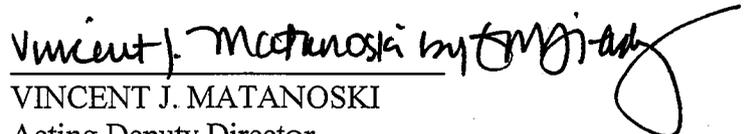
  
SHIELA A. BJORKLUND, ESQ.  
2000 IDS CENTER  
80 South 8<sup>th</sup> Street  
Minneapolis, MN 55402  
Tel: (612) 339-8131

**AUTHORIZED REPRESENTATIVE OF  
THE SECRETARY OF HEALTH AND  
HUMAN SERVICES:**

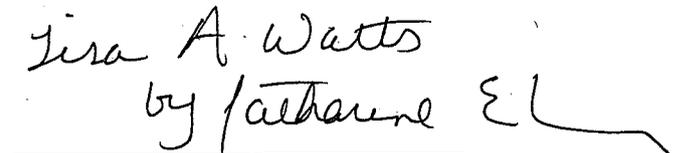
  
GEOFFREY EVANS, M.D.,  
Director, Division of  
Vaccine Injury Compensation  
Healthcare Systems Bureau  
U.S. Department of Health  
and Human Services  
5600 Fishers Lane  
Parklawn Building, Room 11C-26  
Rockville, MD 20857

Dated: Dec. 23, 2008

**AUTHORIZED REPRESENTATIVE  
OF THE ATTORNEY GENERAL:**

  
VINCENT J. MATANOSKI  
Acting Deputy Director  
Torts Branch  
Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, D.C. 20044-0146

**ATTORNEY OF RECORD FOR  
RESPONDENT:**

  
LISA A. WATTS  
Trial Attorney  
Torts Branch  
Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, D.C. 20044-0146  
(202) 616-4099