

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

(Filed: December 28, 2006)

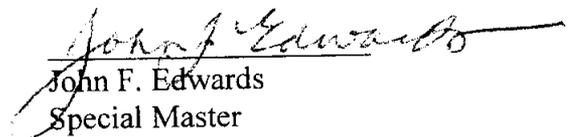
DO NOT PUBLISH

STEPHEN BENSON and KIMBERLY BENSON,)	
as natural parents and guardians of their daughter,)	
MACKENZIE BENSON,)	
)	
Petitioners,)	
)	
v.)	No. 05-1400V
)	Stipulation
SECRETARY OF)	
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	

DECISION DIRECTING ENTRY OF JUDGMENT¹

On December 27, 2006, the parties filed a stipulation. The special master has reviewed thoroughly the stipulation. He adopts completely the stipulation. Therefore, in the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment based upon the stipulation in petitioners' favor.²

The clerk of court shall send petitioners' copy of this decision to petitioners by overnight express delivery.

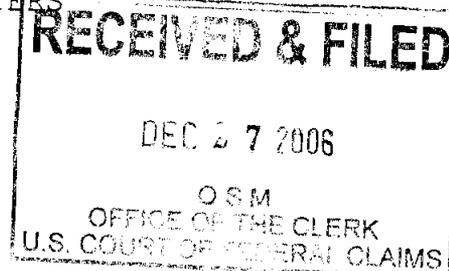

John F. Edwards
Special Master

¹ As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire decision" will be available to the public. *Id.*

² Under Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review. Then, under Vaccine Rule 12(a), petitioners may expedite payment by filing an election to accept the judgment.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS



STEPHEN BENSON and)
KIMBERLY BENSON, as natural)
parents and guardians of)
their daughter,)
MACKENZIE BENSON,)
)
Petitioners,)
)
v.)
)
SECRETARY OF HEATH AND)
HUMAN SERVICES,)
)
Respondent.)

No. 05-1400V

Special Master Edwards

STIPULATION

The parties hereby stipulate to the following matters:

1. For their minor daughter, MacKenzie Benson, on December 30, 2005, petitioners filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 300aa-34 (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to MacKenzie's receipt of the haemophilus influenzae B ("HiB") and/or diphtheria-tetanus-acellular pertussis ("DTaP"), which are listed in the Vaccine Injury Table (the "Table"), 42 U.S.C. § 300aa-14(a); 42 C.F.R. § 100.3(a).
2. MacKenzie received her immunizations on October 13, 2004.
3. The vaccines were administered within the United States.

4. Petitioners allege that MacKenzie sustained the injury of cellulitis. They further allege that as a result of the cellulitis, MacKenzie developed the sequela of impaired left leg strength and mobility, and a compromised immune system.

5. Petitioners represent that there has been no prior award or settlement of a civil action for damages on behalf of MacKenzie as a result of her condition.

6. Respondent denies that MacKenzie sustained a Table injury and denies that the HiB or DTaP vaccines caused in fact any or all of MacKenzie's injuries or pain. Respondent denies that MacKenzie's overly-sensitized immune system is the sequela of her alleged vaccine-related injury.

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 \$5,000.00 in the form of a check payable

to petitioners as legal representatives of MacKenzie Benson.

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 attorney's 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. In return for the payments described in paragraph 8, and any amounts awarded pursuant to paragraph 9, petitioners, in their individual capacities and as legal representatives of MacKenzie, on their own behalf, and on behalf of MacKenzie, her 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 MacKenzie resulting from, or alleged to have resulted from, the DTaP or HiB vaccinations administered on October 13, 2004, as alleged by petitioners in a petition for vaccine compensation filed on or about December 30, 2005, in the United States Court of Federal Claims as petition No. 05-1400V.

12. If MacKenzie should die prior to the Secretary making 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.

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 null and void at the sole discretion of either party.

14. This Stipulation expresses a full, complete, and total 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.

15. All rights and obligations of petitioners hereunder shall apply equally to their successors and assigns as legal representatives of MacKenzie Benson.

END OF STIPULATION

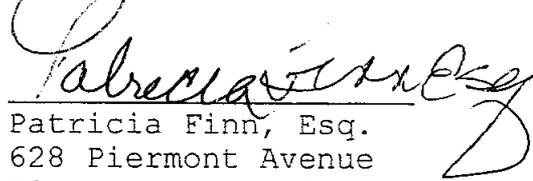
Respectfully submitted,

PETITIONERS:


Stephen Benson


Kimberly Benson

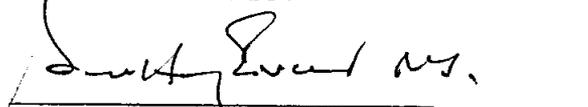
**ATTORNEY OF RECORD FOR
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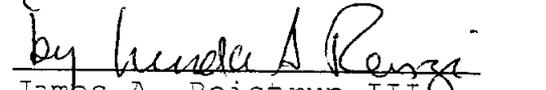
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Dated: 27 December 2006