

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 05-803V

Filed: May 24, 2012

Unpublished

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JOHN DAVID FIELDS, \*  
and wife, CHRISTINA NICOLE FIELDS, \*  
as Legal Representatives for \*  
NICOLE FIELDS, a Minor, \*

Petitioners, \*

v. \*

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

Respondent. \*

\*\*\*\*\*

Stipulation; Measles-mumps-rubella,  
MMR; Diphtheria-tetanus-acellular  
pertussis, DTaP; Hemophilus  
influenza type B, HiB; Varicella;  
Encephalopathy or encephalitis;  
Seizure disorder; Developmental  
delay; Stipulation of attorney fees and  
costs

*Richard G. Danner, Richard Danner, Esq., Dallas, TX, for Petitioners.*

*Linda Sara Renzi, U.S. Department of Justice, Washington, D.C., for Respondent.*

### DECISION ON ENTITLEMENT AND ATTORNEY'S FEES AND COSTS<sup>1</sup>

GOLKIEWICZ, Special Master.

On May 22, 2012, the parties to the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Stipulation, filed May 22, 2012 [hereinafter "Stipulation"]. Petitioners allege that their daughter suffered "an encephalopathy or encephalitis that resulted in a seizure disorder and developmental delays" as a consequence of the MMR, DTaP, HiB and varicella vaccinations she received on July 30, 2002. Stipulation at ¶¶ 1-4. Petitioner further alleges that their daughter experienced the residual effects of the injury for more than six months. *Id.* "Respondent denies that any

<sup>1</sup> The undersigned 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). 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 a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or 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.* Any motion for redaction must be filed by no later than fourteen (14) days after filing date of this filing. Further, consistent with the statutory requirement, a motion for redaction must include a proposed redacted decision, order, ruling, etc.

vaccines caused [petitioner's daughter's] encephalopathy, seizure disorder, or any other injury, or that she continues to suffer any sequelae of a vaccine-related injury.” Id. at ¶ 6. Nonetheless, the parties agreed informally to resolve this matter. Id. at ¶ 7.

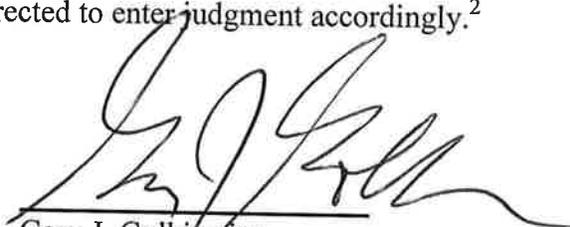
Also on May 122, 2012, the parties filed a Stipulation of Attorneys’ Fees and Costs [hereinafter “Fee Stipulation”]. The Fee Stipulation notes petitioners presented a request for attorneys’ fees and costs to respondent on September 14, 2011. Fee Stipulation at ¶ 2. The parties have informally discussed petitioners’ request and based on these discussions, petitioners amend their request for attorney fees and costs to \$25,500.00; respondent does not object to an award in this amount. Fee Stipulation at ¶ 3. Pursuant to General Order #9, the Fee Stipulation avers “petitioners have not incurred any costs in pursuit of their claim.” Id. at ¶ 4. “The parties now request that a decision awarding the final attorneys’ fees and costs in the amount of \$25,500.00, . . . be issued.” Id. at 5.

The court hereby **ADOPTS** the parties’ said Stipulation, attached hereto, and awards compensation in the amount and on the terms set forth therein. The court also awards the petitioners attorney fees and litigation costs as discussed in the Fee Stipulation. **Specifically, petitioners are awarded:**

- a) **a lump sum of \$12,000.00 in the form of a check payable to petitioners representing compensation for damages that would be available under 42 U.S.C. § 300aa-15(a);**
- b) **petitioners are awarded a lump sum of \$25,500.00 for petitioners’ attorneys’ fees and costs in the form of a check payable jointly to petitioners and petitioners’ attorney of record.**

The Clerk of the Court is directed to enter judgment accordingly.<sup>2</sup>

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
Gary J. Golkiewicz  
Special Master

<sup>2</sup> This document constitutes a final “decision” in this case pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). 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. This amount is intended to cover all legal expenses. This award encompasses all charges by the attorney against a client, “advanced costs” as well as fees for legal services rendered. Furthermore, 42 U.S.C.A. §300aa-15(e)(3) prevents an attorney from charging or collecting fees (including costs) which would be in addition to the amount awarded herein. See generally, Beck v. Secretary of the Dept. of Health & Human Servs., 924 F.2d 1029 (Fed. Cir. 1991).

**ORIGINAL**

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

**FILED**

**MAY 22 2012**

**U.S. COURT OF  
FEDERAL CLAIMS**

**ORIGINAL**

JOHN DAVID FIELDS, and wife,	)
CHRISTINA NICOLE FIELDS, as	)
Legal Representatives for	)
JAYLA NICOLE FIELDS, a Minor,	)
	)
Petitioners,	)
v.	)
	)
SECRETARY OF HEALTH	)
AND HUMAN SERVICES,	)
	)
Respondent.	)

No. 05-803V  
Special Master Golkiewicz  
ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of their daughter, Jayla Nicole Fields (“Jayla”), 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 Jayla’s receipt of measles-mumps-rubella (“MMR”), diphtheria- acellular pertussis-tetanus (“DtaP”), Haemophilis influenza type B (“HiB”), and varicella vaccines, which vaccines are contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3 (a).
2. Jayla received MMR, DtaP, HiB and varicella immunizations on July 30, 2002.
3. The vaccines were administered within the United States.
4. Petitioners allege that Jayla suffered an encephalopathy or encephalitis that resulted in a seizure disorder and developmental delays, and that Jayla experienced residual effects of this injury for more than six months.
5. Petitioners represent that there has been no prior award or settlement of a civil action

for damages on behalf of Jayla as a result of her condition.

6. Respondent denies that any vaccines caused Jayla's encephalopathy, seizure disorder, or any other injury, or that she continues to suffer any sequelae of a 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 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 \$12,000.00 in the form of a check payable to petitioners, John David Fields and Christina Nicole Fields, as legal representative of Jayla Nicole Fields. 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. Petitioners and their 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, the money provided pursuant to this Stipulation will be used solely for the benefit of Jayla 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. 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 Jayla's estate under the laws of the Texas.

14. In return for the payments described in paragraphs 8 and 9, petitioners, in their individual capacities and as legal representatives of Jayla, on behalf of Jayla, her 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 Jayla resulting from, or alleged to have resulted from, MMR, HiB, DTaP or

Varivax vaccines administered on July 30, 2002, as alleged by petitioners in a petition for vaccine compensation filed on or about July 29, 2005, in the United States Court of Federal Claims as petition No. 05-803V.

15. If Jayla 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 any vaccines caused Jayla's encephalopathy, seizure disorder, or any other injury, or that she continues to suffer any sequelae of a vaccine-related injury.

19. All rights and obligations of petitioners hereunder shall apply equally to petitioners' heirs, executors, administrators, successors, and/or assigns.as legal representatives of Jayla Nicole Fields.

END OF STIPULATION

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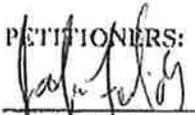
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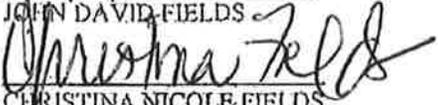
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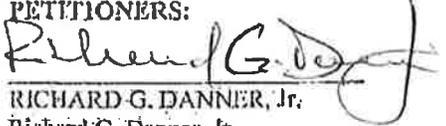
Respectfully submitted,

PETITIONERS:

  
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JOHN DAVID FIELDS

  
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CHRISTINA NICOLE FIELDS

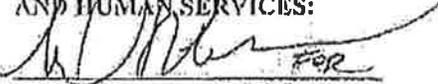
ATTORNEY OF RECORD FOR  
PETITIONERS:

  
\_\_\_\_\_  
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Richard G. Danner, Jr.,  
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(214) 987-0066

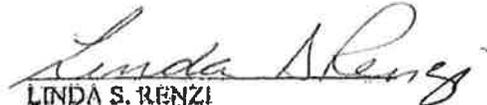
AUTHORIZED REPRESENTATIVE  
OF THE ATTORNEY GENERAL:

  
\_\_\_\_\_  
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Civil Division  
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Washington, DC 20044-0146

AUTHORIZED REPRESENTATIVE  
OF THE SECRETARY OF HEALTH  
AND HUMAN SERVICES:

  
\_\_\_\_\_  
GEOFFREY EVANS, M.D.  
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Healthcare Systems Bureau  
U.S. Department of Health  
and Human Services  
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Parklawn Building, Mail Stop 11C-26  
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RESPONDENT:

  
\_\_\_\_\_  
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(202) 616-4133

Dated: May 18, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that on this 22<sup>nd</sup> day of May, 2012, a copy of this **STIPULATION** was served via first-class mail, postage prepaid, upon:

RICHARD DANNER, JR., ESQ.  
Richard Danner Esq.  
6440 North Central Expressway  
Suite 515  
Dallas, TX 75206

  
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