

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 10-365 V

Originally Filed: April 28, 2011

Filed Redacted: May 4, 2011

Not to be Published

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CARINA BAIRD and JAMES BAIRD, \*  
as parents and natural guardians of \*  
A.B. \*

Petitioners, \*

v. \*

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

Respondent. \*

\*\*\*\*\*

Anne C. Toale, Sarasota, FL, for petitioner.  
Lisa A. Watts, Washington, DC, for respondent.

Decision on Damages based on Stipulation;  
DTaP, IPV Vaccines,  
hypotonia, encephalopathy

**MILLMAN, Special Master**

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

On April 27, 2011, the parties filed the attached stipulation in which they agreed to settle this case and described the settlement terms. Petitioners alleged that A.B. suffered from hypotonia and encephalopathy following diphtheria-tetanus-acellular pertussis (“DTaP”) and inactivated polio vaccine (“IPV”) vaccinations. Respondent denies that A.B.’s injuries were

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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. On April 29, 2011, petitioners moved to redact, and I am granting their motion in this note.

caused in fact by his vaccinations. Nonetheless, the parties agreed to resolve this matter informally

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 **\$125,000.00** in the form of a check made payable to petitioners as guardians/conservators of A.B.'s estate.

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.**

Dated: May 4, 2011

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

CARINA BAIRD and JAMES BAIRD, as parents and natural guardians of, ██████████, a minor	)	
	)	
	)	<u>ECF</u>
	)	
Petitioners,	)	
	)	
v.	)	No. 10-365V
	)	Special Master Millman
SECRETARY OF HEALTH AND HUMAN SERVICES,	)	
	)	
	)	
Respondent.	)	

STIPULATION

The parties hereby stipulate to the following matters:

1. On June 11, 2010, Carina and James Baird ("petitioners"), filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34, as amended (the "Vaccine Program"), on behalf of their minor child, ██████████ ("██████████"). The petition seeks compensation for injuries allegedly related to ██████████'s receipt of diphtheria-tetanus-acellular pertussis ("DTaP") vaccine and inactivated polio vaccine ("IPV"), which vaccines are contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. ██████████ received the DTaP vaccine and the IPV vaccine on June 21, 2007.
3. The vaccines were administered within the United States.
4. Petitioners allege that within days of vaccination, ██████████ developed sudden and progressive onset of weakness and head lag. ██████████ was diagnosed with hypotonia and encephalopathy, which petitioners' allege were caused-in-fact by receipt of DTaP and IPV vaccines. Petitioners further allege that ██████████ suffered 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 [REDACTED]'s behalf as a result of his condition.

6. Respondent denies that [REDACTED]'s claimed injuries were caused by the DTaP and/or IPV vaccines, and denies that his current disabilities are sequelae of his alleged 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 \$125,000.00 in the form of a check payable to petitioners as guardians/conservators of [REDACTED]'s estate. This amount represents compensation for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which petitioners would be entitled on [REDACTED]'s behalf.

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, except for any award for attorneys' fees and litigation costs, the money provided pursuant to this Stipulation will be used solely for [REDACTED] 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).

13. Petitioners represent that they presently are, or within 90 days of the date of judgment will become, duly authorized to serve as guardians/conservators of [REDACTED]'s estate under the laws of the State of California. No payments pursuant to this Stipulation shall be made to petitioners until petitioners provide the Secretary with documentation establishing their appointment as guardians/conservators of [REDACTED]'s estate. If petitioners are not authorized by a court of competent jurisdiction to serve as guardians/conservators of the estate of Aidan Baird at the time 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 [REDACTED] upon submission of written documentation of such appointment to the Secretary.

14. In return for the payments described in paragraph 8 and 9, petitioners, in their individual capacities and as legal representatives of [REDACTED], on behalf of themselves, [REDACTED], and

his heirs, executors, administrators, successors or assigns, do forever irrevocably and unconditionally release, acquit and discharge the United States of America 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, 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 personal injuries to or death of [REDACTED] resulting from, or alleged to have resulted from, the DTaP and IPV vaccines administered on June 21, 2007, as alleged by petitioners in a petition for vaccine compensation filed on June 11, 2010, in the United States Court of Federal Claims as petition No. 10-365V.

15. If [REDACTED] 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 or the IPV vaccine caused [REDACTED]'s injuries, or that his current disabilities are sequelae of his alleged vaccine injury.

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

END OF STIPULATION