

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

SHANNON M. McGRATH, *
as Administratrix of the estate of S.M., *
an infant, deceased, *

No. 11-521V
Special Master Christian J. Moran

Petitioner, *

Filed: March 21, 2013

v. *

Stipulation; diphtheria-tetanus-acellular
pertussis, inactivated poliovirus,
haemophilus influenza type b,
pneumococcal conjugate, rotavirus vaccines;
death

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Respondent. *

UNPUBLISHED DECISION¹

Rudolph L. Mass, Massa Law Group, Pittsburgh, PA, for Petitioner;
Ann D. Martin, U.S. Department of Justice, Washington, D.C., for Respondent.

On March 19, 2013, respondent filed a joint stipulation concerning the petition for compensation filed on August 17, 2011 by Shannon McGrath as Administratrix of the estate of S.M., an infant, deceased. In her petition, petitioner alleged that the diphtheria-tetanus-acellular pertussis, inactivated poliovirus, haemophilus influenza type b, pneumococcal conjugate and/or rotavirus vaccines, which are contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. §100.3(a), and which S.M. received on September 16, 2009, caused her death on September 18, 2009. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of S.M. as a result of S.M.'s death.

Respondent denies that the vaccines S.M. received on September 16, 2009 caused her to suffer any injury or her death.

Nevertheless, the parties agree to the joint stipulation, attached hereto as Appendix A. The undersigned finds said stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

¹ The E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002), requires that the Court post this decision on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

Damages awarded in that stipulation include:

A lump sum payment of \$140,000.00 in the form of a check payable to petitioner as Administratrix of the Estate of S.M. 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 is directed to enter judgment in case 11-521V according to this decision and the attached stipulation.²

Any questions may be directed to my law clerk, Jay All, at (202) 357-6353.

IT IS SO ORDERED.

s/Christian J. Moran
Christian J. Moran
Special Master

² 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.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of S.M. as a result of S.M.'s death.

6. Respondent denies that the vaccines received by S.M. caused her to suffer any injury; and denies that S.M.'s death occurred as the result of the vaccines.

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 \$140,000.00 in the form of a check payable to petitioner as Administratrix of the Estate of S.M. 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. Payment 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. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as legal representative of the Estate of S.M. under the laws

of the Commonwealth of Pennsylvania. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as conservator of S.M.'s estate. If petitioner is not authorized by a court of competent jurisdiction to serve as conservator of the estate of S.M. 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 conservator of the estate of S.M. upon submission of written documentation of such appointment to the Secretary.

12. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity and as legal representative of the Estate of S.M., on her own behalf, and on behalf of S.M.'s 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. § 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 S.M. resulting from, or alleged to have resulted from, the vaccinations administered on or about September 16, 2009, as alleged by petitioner in a petition for vaccine compensation filed on or about August 17, 2011, in the United States Court of Federal Claims as petition No. 11-521V, in the United States Court of Federal Claims.

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 voidable at the sole discretion of either party.

14. 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.

15. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the vaccines received by S.M. caused her to suffer any injury or death; or that S.M.'s death occurred as the result of a vaccine-related injury.

16. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns as legal representative of the Estate of S.M.

END OF STIPULATION

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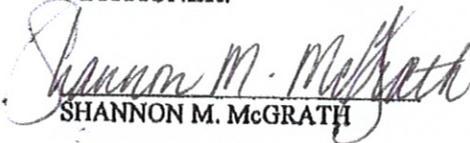
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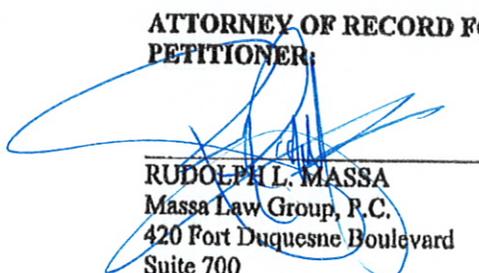
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Respectfully submitted,

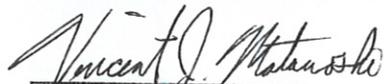
PETITIONER:

 03/11/13
SHANNON M. McGRATH

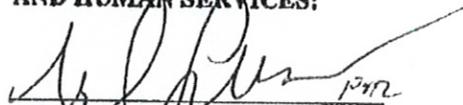
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Dated: March 19, 2013