

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 06-611V

Filed: January 8, 2009

Not for publication

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KEVIN DUNN,

\*

\*

Petitioner,

\*

\*

v.

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\*

Damages and attorneys' fees and costs  
based on stipulation; GBS following MMR  
vaccination

SECRETARY OF THE DEPARTMENT  
OF HEALTH AND HUMAN SERVICES,

\*

\*

\*

Respondent.

\*

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Patricia Finn, Piermont, NY, for petitioner.

Lisa A. Watts, Washington, DC, for respondent.

### DECISION<sup>1</sup>

On January 5, 2009, the parties filed the attached stipulation, in which they agreed to settle damages and attorneys' fees and costs in this case and described the settlement terms. Petitioner alleged that he suffered from Guillain-Barré Syndrome ("GBS"), following the receipt of a measles, mumps, and rubella ("MMR") vaccination. Respondent denies that petitioner's GBS was caused by his vaccination. Nonetheless, the parties agreed to resolve this matter informally. Petitioner certifies that \$5,000.00 reflects the personal, out-of-pocket costs associated with the filing of and proceedings pursuant to General Order #9.

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

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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.

court awards the following:

(1) a lump sum of **\$164,827.85** in the form of a check payable to petitioner. This amount represents compensation for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which petitioner would be entitled; and,

(2) a lump sum of **\$5,000.00** in the form of a check payable to petitioner for reimbursement of his out-of-pocket costs associated with the filing of his out-of-pocket costs associated with the filing of and proceedings on the petitioner pursuant to General Order #9; and,

(3) a lump sum of **\$35,000.00** in the form of a check payable jointly to petitioner and petitioner's attorney, Patricia Finn, for attorneys' fees and litigation costs.

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: January 8, 2009

/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

KEVIN DUNN,	)	
	)	
Petitioner,	)	
v.	)	<b>No. 06-611V</b>
	)	<b>Special Master</b>
SECRETARY OF HEALTH	)	<b>Laura D. Millman</b>
AND HUMAN SERVICES,	)	
	)	
Respondent.	)	
	)	

STIPULATION

It is hereby stipulated by and between the parties, the following matters:

1. On August 31, 2006, Kevin Dunn (“petitioner”), 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”). The petition seeks compensation for injuries allegedly related to petitioner’s receipt of a measles, mumps, and rubella (“MMR”) vaccine. MMR vaccine is covered under the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a)(III-V), as amended.
2. Petitioner received the MMR vaccine on April 19, 2005.
3. The vaccine was administered within the United States.
4. Petitioner alleges that approximately two weeks after receiving the MMR vaccine, he experienced ascending numbness and weakness of all four extremities. He was admitted to Long Island Jewish Medical Center on May 8, 2005, and diagnosed with Guillain-Barré Syndrome (“GBS”), confirmed by EMG studies. To date, petitioner continues to suffer from residuals of GBS, which he believes was caused by the MMR vaccine.

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

6. Respondent denies that petitioner's GBS was caused by the MMR vaccine he received.

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 payments:

a. A lump sum of \$164,827.85 in the form of a check payable to petitioner. This amount represents compensation for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which petitioner would be entitled; and,

b. a lump sum of \$5,000.00 in the form of a check payable to petitioner for reimbursement of his out-of-pocket costs associated with the filing of and proceedings on the petition pursuant to General Order #9; and,

c. a lump sum of \$35,000.00 in the form of a check payable jointly to petitioner and petitioner's attorney, Patricia Finn, for attorney's fees and litigation costs.

9. Payments 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 for reasonable attorney's fees and costs incurred in this proceeding, the money provided pursuant to this Stipulation will be used solely for the benefit of petitioner 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. In return for the payments described in paragraph 8, petitioner in his individual capacity, and on behalf of his heirs, executors, administrators, successors or assigns, 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 petitioner resulting from, or alleged to have resulted from, an MMR vaccine administered to him on April 19, 2005, as alleged by petitioner in a petition for vaccine compensation filed on or about August 31, 2006, in the United States Court of Federal Claims as petition No. 06-611V.

12. If petitioner should die prior to receiving the payment described in paragraph 8(a), 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 voidable at the sole discretion of either party.

14. 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.

15. All rights and obligations of petitioner hereunder shall apply equally to petitioner's successors and assigns.

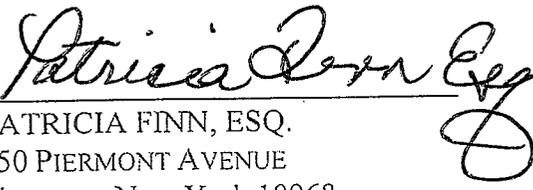
END OF STIPULATION

Respectfully submitted,

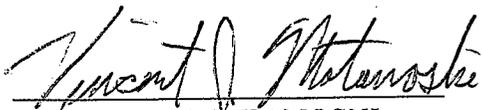
**PETITIONER:**

  
\_\_\_\_\_  
KEVIN DUNN

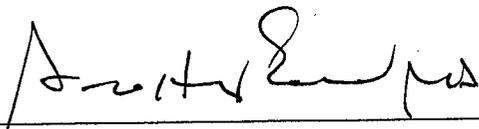
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\_\_\_\_\_  
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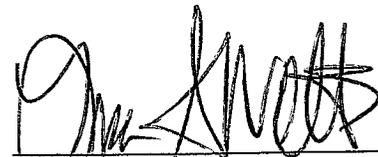
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Dated: 1-5-2009