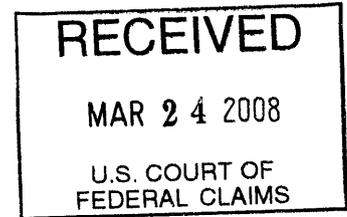


# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS



\*\*\*\*\*  
ALLENE MIKOLYSKI, Natural \*  
Parent and Guardian Ad Litem for \*  
JOY MIKOLYSKI, a minor, \*  
\*  
Petitioner, \*  
\*  
v. \*  
\*  
SECRETARY OF HEALTH \*  
AND HUMAN SERVICES, \*  
\*  
Respondent. \*  
\*\*\*\*\*

No. 07-88V  
Special Master Christian J. Moran

Filed: March 24, 2008

### UNPUBLISHED DECISION

Carol L. Gallagher, Esq., Gallagher & Gallagher, Somers Point, N.J. for Petitioner;  
Voris Johnson, Esq., U.S. Department of Justice, Washington, D.C., for Respondent.

On March 5, 2008, the parties filed a joint stipulation concerning the claim made in the petition filed by Allene Mikolyski, the natural parent and guardian ad litem for Joy Mikolyski, on February 5, 2007. Ms. Mikolyski alleges that the measles-mumps-rubella vaccine, which Joy received on May 25, 2006, caused Joy to develop thrombocytopenic purpura. Ms. Mikolyski sought compensation for those injuries.

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\* Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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 clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, petitioner has 14 days to identify and to move to delete such information before 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.

Respondent conceded that Joy was entitled to compensation. Resp't Rep't, filed July 6, 2007.

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.

Damages awarded in that stipulation include:

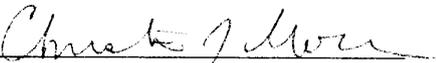
**A lump sum of \$32,200.00 in the form of a check payable to Petitioner, as guardian of Joy's estate.**

**A lump sum of \$227.19 in the form of a check payable to Petitioner for past unreimbursable expenses.**

This amount represents compensation for all damages that would be available pursuant to 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 07-88V according to this decision and the attached stipulation.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
Christian J. Moran  
Special Master

extra.

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

\_\_\_\_\_)  
 ALLENE MIKOLYSKI, Natural Parent )  
 and Guardian Ad Litem for )  
 JOY MIKOLYSKI, a minor, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 SECRETARY OF THE DEPARTMENT )  
 OF HEALTH AND HUMAN SERVICES, )  
 )  
 Respondent. )  
 \_\_\_\_\_)

No. 07-88V  
Special Master Moran

**STIPULATION**

The parties hereby stipulate to the following matters:

1. On behalf of her daughter, Joy Mikolyski (“Joy”), petitioner Allene Mikolyski 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 Joy’s receipt of a measles-mumps-rubella (“MMR”) vaccine, which vaccine is contained in the Vaccine Injury Table (the “Table”) at 42 U.S.C. § 300aa-14(a)(III-V) and 42 C.F.R. §100.3(a)(III-V).
2. Joy received her first MMR immunization on May 25, 2006.
3. The vaccine was administered within the United States.
4. Joy sustained the first symptom or manifestation of the onset of thrombocytopenic purpura within the time period set forth in the Table.
5. Joy suffered the residual effects or complications of her injury for more than six months after the MMR vaccination.

6. There is not a preponderance of the evidence demonstrating that Joy's injury is due to a factor unrelated to her May 25, 2006 MMR vaccination.

7. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of Joy as a result of her condition.

8. Accordingly, Joy is entitled to compensation under the terms of the Vaccine Program. Therefore, a decision should be entered awarding the compensation described in paragraphs 9(a) and (b) of this Stipulation.

9. 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 payments:

a. A lump sum of \$32,200.00 in the form of a check payable to petitioner, as guardian of Joy's estate. This amount represents compensation for future medical care (in the amount of \$2,200.00) and pain and suffering (in the amount of \$30,000 and not in excess of any statutory maximums); and,

b. A lump sum of \$227.19 in the form of a check payable to petitioner for past unreimbursable expenses.

10. 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.

11. Payments made pursuant to paragraph 9, and any amounts awarded pursuant to paragraph 10, 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, litigation costs and past unreimbursable expenses, the money provided pursuant to this Stipulation will be used solely for the benefit of Joy 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. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as guardian of Joy's estate under the laws of the State of California. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as guardian of Joy's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian of the estate of Joy Mikolyski at the time a payment pursuant to this Stipulation is made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as guardian of the estate of Joy Mikolyski upon submission of written documentation of such appointment to the Secretary.

14. In return for the payments described in paragraphs 9(a) and (b), petitioner, in her individual capacity and as legal representative of Joy, on behalf of herself, Joy and her 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, Joy resulting

from, or alleged to have resulted from, the MMR, hepatitis B or oral polio vaccinations administered on May 25, 2006, as alleged by petitioner in a petition for vaccine compensation filed on or about February 5, 2007, in the United States Court of Federal Claims as petition No. 07-88V.

15. If Joy should die prior to the petitioner receiving any or all of the payments described in paragraphs 9(a) and (b), this agreement shall be considered 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 in the event 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.

17. This Stipulation expresses a full and complete settlement of liability and damages claimed in this matter by petitioner under the National Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 10 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.

18. All rights and obligations of petitioner hereunder shall apply equally to her heirs, successors and/or assigns as legal representatives of Joy Mikolyski.

END OF STIPULATION

Respectfully submitted,

**PETITIONER:**

  
ALLENE MIKOLYSKI

**ATTORNEY OF RECORD FOR  
PETITIONER:**

  
CAROL L. GALLAGHER  
Gallagher & Gallagher  
822 Shore Road  
Somers Point, NJ 08244  
(609) 926-6450

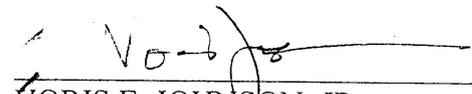
**AUTHORIZED REPRESENTATIVE  
OF THE ATTORNEY GENERAL:**

  
VINCENT J. MATANOSKI  
Acting Deputy Director  
Torts Branch  
Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, DC 20044-0146

**AUTHORIZED REPRESENTATIVE  
OF THE SECRETARY OF HEALTH  
AND HUMAN SERVICES:**

  
GEOFFREY EVANS, M.D.  
Director, Division of  
Vaccine Injury Compensation  
Healthcare Systems Bureau  
U.S. Department of Health  
and Human Services  
5600 Fishers Lane  
Parklawn Building, Mail Stop 11C-26  
Rockville, MD 20857

**ATTORNEY OF RECORD FOR  
RESPONDENT:**

  
VORIS E. JOHNSON, JR.  
Trial Attorney  
Torts Branch  
Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, DC 20044-0146  
(202) 616-4136

Dated: 3/5/08