

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 07-721V

Filed: January 6, 2009

Not for publication

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SCOTT B. NORSTAD, \*

\*

Petitioner, \*

\*

v. \*

Damages decision based on stipulation;

ADEM following MMR vaccination

\*

SECRETARY OF THE DEPARTMENT \*

OF HEALTH AND HUMAN SERVICES, \*

\*

Respondent. \*

\*

\*\*\*\*\*

Sheila A. Bjorklund, Minneapolis, MN, for petitioner.

Ryan D. Pyles, Washington, DC, for respondent.

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

On December 30, 2008, the parties filed the attached stipulation, in which they agreed to settle this case and described the settlement terms. Petitioner alleged that he suffered from a demyelinating disease, specifically acute disseminated encephalomyelitis (“ADEM”), following the receipt of a measles, mumps, and rubella (“MMR”) vaccination. Respondent denies that petitioner’s ADEM was caused in fact or was significantly aggravated by his vaccination. Nonetheless, the parties agreed to resolve this matter informally.

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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.

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 the following:

(1) a lump sum of **\$347,500.00** in the form of a check payable to petitioner; and

(2) a lump sum of **\$4,491.22**, which represents compensation for reimbursement of the state's Medicaid lien, in the form of a check payable jointly to petitioner and Minnesota Department of Human Resources, Health Care Operations - Benefit Recovery, 540 Cedar St., St. Paul, Minnesota, 55155, ATTN: Michael Schoff.

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 of the court is directed to enter judgment herewith.<sup>2</sup>

**IT IS SO ORDERED.**

Date: January 6, 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

SCOTT B. NORSTAD,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 07-721V
	)	Special Master
	)	Laura D. Millman
SECRETARY OF HEALTH AND HUMAN	)	
SERVICES,	)	
	)	
Respondent.	)	
	)	
	)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Petitioner Scott Norstad 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 Mr. Norstad's receipt of a measles, mumps and rubella-containing vaccine ("MMR vaccine"), which vaccine is contained in the Vaccine Injury Table (the "Table"). 42 U.S.C. § 300aa-14(a)(II); 42 C.F.R. § 100.3(a)(III).

2. Petitioner received an MMR vaccine on or about June 1, 2005.

3. The vaccine was administered within the United States.

4. Petitioner alleges that the MMR vaccine either caused or significantly aggravated a demyelinating disease, specifically

acute disseminated encephalomyelitis ("ADEM"), which resulted in sequelae.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of Scott Norstad as a result of his condition.

6. Respondent denies that MMR immunization caused Scott Norstad any demyelinating disease, such as ADEM or multiple sclerosis, and/or any other injury. Respondent further denies that MMR immunization significantly aggravated any condition which Scott Norstad may have had prior to vaccination.

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 payments:

(1) A lump sum of \$347,500.00 in the form of a check payable to petitioner; and

(2) A lump sum of \$4,491.22, which amount represents compensation for reimbursement of the state's Medicaid lien, in the form of a check payable jointly to petitioner and Minnesota Department of Human Resources, Health Care Operations - Benefit Recovery, 540 Cedar St., St. Paul,

Minnesota 55155, ATTN: Michael Schoff.

The amounts listed in this the Eighth paragraph of this Stipulation represent 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. 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.

11. 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 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).

12. In return for the payments described in paragraphs 8 and 9, petitioner 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, the MMR vaccine administered on or about June 1, 2005, as alleged by petitioner in a petition for vaccine compensation filed on or about October 10, 2007, in the United States Court of Federal Claims as petition No. 07-721V.

13. If petitioner should die prior to receiving the payments described in paragraph 8, this agreement shall be considered voidable upon proper notice to the Court on behalf of either or both of the parties.

14. 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 null and void at the sole discretion of either party.

15. This Stipulation expresses a full and complete 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.

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

END OF STIPULATION

/

Respectfully submitted,

PETITIONER:

Scott Norstad  
SCOTT B. NORSTAD

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PETITIONER:

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Dated: December 30, 2008