

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 10-841V

Filed: May 30, 2012

SUDIP GHOSAL and MANISHA *
BANERJEE, as parents and natural *
guardians of RONOK GHOSAL, an infant, *

NOT TO BE PUBLISHED

Petitioners, *

Stipulation; rotavirus vaccine;
intussusception.

v. *

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Respondent. *

Herbert L. Waichman, Parker & Waichman, Great Neck, NY, for Petitioner
Linda S. Renzi, United States Dep't of Justice, Washington, D.C., for Respondent

DECISION¹

Zane, Special Master.

On May 25, 2012, the parties in the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Petitioners, on behalf of their son, Ronok Ghosal (“Ronok”), allege that Ronok suffered intussusception that was caused in fact by his receipt of the rotavirus immunizations which he received on December 11, 2007, February 11, 2008, and April 8, 2008, and which vaccines are contained in the Vaccine Injury Table, 42 C.F.R § 100.3(a). Petitioners also allege that Ronok experienced the residual effects of the complications of this injury for more than six months and that they have not otherwise received compensation for such injuries. Petitioners seek

¹ The special master intends to post this decision on the website for the United States Court of Federal Claims in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). 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. As provided by Vaccine Rule 18(b), each party has 14 days to file a motion requesting the redaction from this decision of any such alleged material. In the absence of a timely request, which includes a proposed redacted decision, the entire document will be made publicly available.

compensation related to these injuries pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 to 34.

Respondent denies that the rotavirus vaccine caused Ronok's intussusception, or any other injury, and denies that any current disabilities are sequelae of his alleged injury. Nonetheless, the parties have agreed informally to resolve this matter. Stipulation, Appendix A hereto.

The court hereby ADOPTS the parties' said Stipulation, attached hereto as Appendix A, and awards compensation in the amount and on the terms set forth therein. Specifically, Petitioners are awarded:

a lump sum of \$10,000.00, in the form of a check payable to Petitioners as guardians/conservators of Ronok's estate.

This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a). The court thanks the parties for their cooperative efforts in resolving this matter. In the absence of a motion for review filed pursuant to RCFC, Appendix B, the Clerk is directed to enter judgment accordingly.²

IT IS SO ORDERED.

s/Daria J. Zane
Daria J. Zane
Special Master

² This document constitutes a final "decision" in this case pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). Unless a motion for review of this decision is filed within 30 days, the Clerk of the Court shall enter judgment in accordance with this decision. 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.

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

SUDIP GHOSAL and MANISHA
BANERJEE, as parents and natural
guardians of RONOK GHOSAL, an infant,

Petitioners,

v.

SECRETARY OF HEALTH AND HUMAN
SERVICES,

Respondent.

No. 10-841V
Special Master Zane
ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. Sudip Ghosal and Manisha Banerjee ("petitioners") filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34 (the "Vaccine Program") on behalf of their son, Ronok Ghosal ("Ronok"). The petition seeks compensation for injuries allegedly related to Ronok's receipt of rotavirus vaccines, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Ronok received rotavirus immunizations on December 11, 2007, February 11, 2008, and April 8, 2008.
3. The vaccinations were administered within the United States.
4. Petitioners allege that Ronok suffered intussusception that was caused in fact by the vaccinations.
5. Petitioners represent that there has been no prior award or settlement of a civil action for damages on Ronok's behalf as a result of his condition.
6. Respondent denies that the rotavirus vaccine caused Ronok's intussusception, or any

other injury; denies that any current disabilities are sequelae of his alleged injury; and denies that Ronok experienced the residual effects of this injury for more than six months.

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 \$10,000.00 in the form of a check payable to petitioners as guardians/conservators of Ronok's estate. 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 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 entities that provide health services on a pre-paid basis.

11. Payment made pursuant to paragraph 8 of this Stipulation and any amounts awarded pursuant to paragraph 9 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 the benefit of Ronok 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 Ronok's estate under the laws of the State of California.

14. In return for the payments described in paragraph 8 and 9, petitioners, in their individual capacities, and as legal representatives of Ronok, on behalf of themselves, Ronok, and his heirs, executors, administrators, successors or assigns, do 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 Ronok resulting from, or alleged to have resulted

from, rotavirus vaccinations administered on December 11, 2007, February 11, 2008 and April 8, 2008, as alleged by petitioners in a petition for vaccine compensation filed on or about December 7, 2010 , in the United States Court of Federal Claims as petition No. 10-841V.

15. If Ronok should die prior to entry of the 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.

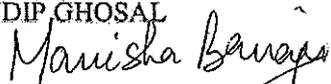
18. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the rotavirus vaccine caused Ronok's intussusception or any other injury; that any current disabilities are sequelae of his alleged injury; or that Ronok experienced the residual effects of this injury for more than six months.

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

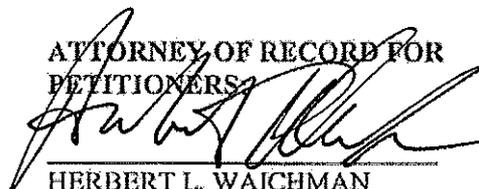
END OF STIPULATION

Respectfully submitted,

PETITIONERS:


SUDIP GHOSAL

MANISHA BANERJEE

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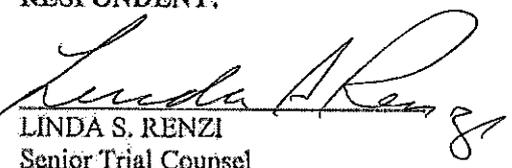
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Dated: 25 May 2012