

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

[REDACTED]	*	
	*	No. 10-468V
Petitioner,	*	Special Master Christian J. Moran
	*	
v.	*	Filed: June 25, 2012
	*	
SECRETARY OF HEALTH	*	Stipulation; hepatitis A;
AND HUMAN SERVICES,	*	tetanus, diphtheria, acellular
	*	pertussis vaccines; Toxic
Respondent.	*	Epidermal Necrolysis.
	*	

UNPUBLISHED DECISION¹

Andrew D. Downing, Rhodes, Hieronymus, et al., Tulsa, OK, for Petitioners;
Claudia B. Gangi, U.S. Department of Justice, Washington, D.C., for Respondent.

On June 21, 2012, the parties filed a joint stipulation concerning the petition for compensation filed by [REDACTED], as parents of their daughter, [REDACTED] (“[REDACTED]”), on July 21, 2010. In their petition, the petitioners alleged that the hepatitis A vaccine and/or tetanus/diphtheria/acellular pertussis (“Tdap”) vaccines, which are contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a), and which [REDACTED] received on February 21, 2007, caused [REDACTED] to sustain the first symptom or manifestation of the onset of Toxic Epidermal Necrolysis (“TEN”) within eight days of receipt of the vaccines, the residual effects of which lasted for more than six months.

Respondent denies that [REDACTED] suffered the onset of TEN as the result of her February 21, 2007 hepatitis A and/or Tdap vaccinations and denies that the hepatitis A and/or Tdap vaccines caused her TEN and current disabilities.

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.

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.

Damages awarded in that stipulation include:

- A. A lump sum payment of \$2,434.13 in the form of a check payable jointly to petitioner and [REDACTED], for out-of-pocket expenses incurred in proceeding on the petition;**
- B. A lump sum payment of \$10,354.83, which amount represents reimbursement of a [REDACTED] Medicaid lien, in the form of a check payable jointly to petitioner and**

[REDACTED]

[REDACTED]

- D. An amount neither less nor greater than \$100,000.00 to purchase the annuity contract described in paragraph 10 of the attached stipulation, paid to the life insurance company from which the annuity will be purchased.**

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 10-468V according to this decision and the attached stipulation.

Any questions may be directed to my law clerk, Jennifer C. Chapman, at (202) 357-6358.
IT IS SO ORDERED.

s/Christian J. Moran

Christian J. Moran
Special Master

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

[REDACTED])	
)	
Petitioner,)	
)	No. 10-468V
v.)	Special Master Moran
)	ECF
SECRETARY OF HEALTH AND)	
HUMAN SERVICES,)	
)	
Respondent.)	
_____)	

STIPULATION

The parties hereby stipulate to the following matters:

1. [REDACTED] petitioner, 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 petitioner’s receipt of the hepatitis A (“Hep A”) and/or tetanus/diphtheria/acellular pertussis (“Tdap”) vaccines, which vaccines are contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3 (a).
2. Petitioner received her Hep A and Tdap immunizations on February 21, 2007.
3. The vaccinations were administered within the United States.
4. Petitioner alleges that she sustained the first symptom or manifestation of the onset of Toxic Epidermal Necrolysis (“TEN”) within eight days of receipt of the vaccines, and that she experienced the residual effects of this injury for more than six months.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on her behalf as a result of her condition.

6. Respondent denies that petitioner suffered the onset of TEN as the result of her February 21, 2007 Hep A and/or Tdap vaccinations and denies that the Hep A and/or Tdap vaccines caused her TEN and current disabilities.

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:

a. In compliance with General Order #9, a lump sum of \$2,434.13 in the form of a check payable jointly to petitioner and [REDACTED] for out-of-pocket expenses incurred in proceeding on the petition;

b. A lump sum of \$10,354.83, which amount represents reimbursement of a State of [REDACTED] Medicaid lien, in the form of a check payable jointly to petitioner and [REDACTED]

[REDACTED]

d. An amount neither less nor greater than \$100,000.00 to purchase the annuity contract described in paragraph 10 below, paid to the life insurance company from which the annuity will be purchased (the "Life Insurance Company").

These amounts represent compensation for damages that would be available under 42 U.S.C. §300aa-15(a), and reasonable attorneys' fees and costs available under 42 U.S.C. § 300aa-21(a)(1).

9. The Life Insurance Company must have a minimum of \$250,000,000 capital and surplus, exclusive of any mandatory security valuation reserve. The Life Insurance Company must have one of the following ratings from two of the following rating organizations:

- a. A.M. Best Company: A++, A+, A+g, A+p, A+r, or A+s;
- b. Moody's Investor Service Claims Paying Rating: Aa3, Aa2, Aa1, or Aaa;
- c. Standard and Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+, or AAA;
- d. Fitch Credit Rating Company, Insurance Company Claims Paying Ability Rating: AA-, AA, AA+, or AAA.

10. The Secretary of Health and Human Services agrees to purchase an annuity contract from the Life Insurance Company for petitioner's benefit, pursuant to which the Life Insurance Company will agree to make payments periodically to petitioner for all damages that would be available under 42 U.S.C. §300aa-15(a), as follows:

Beginning on November 3, 2018, \$24,000.00 annually, guaranteed for five (5) years, with the last guaranteed payment to be made on November 3, 2022.

The purchase price of the annuity shall be neither less nor greater than \$100,000.00. In the event that the cost of the annuity payments set forth above varies from \$100,000.00, the annual payment shall be adjusted to ensure that the total cost of the annuity is neither less nor greater than \$100,000.00. Should [REDACTED] predecease the exhaustion of any certain payments set forth above, any remaining certain payments shall be made to her estate. Written notice to the

Secretary of Health and Human Services and to the Life Insurance Company shall be provided within twenty (20) days of I [REDACTED] s death.

11. The annuity contract will be owned solely and exclusively by the Secretary of Health and Human Services and will be purchased as soon as practicable following the entry of a judgment in conformity with this Stipulation. The parties stipulate and agree that the Secretary of Health and Human Services and the United States of America are not responsible for the payment of any sums other than the amounts set forth in paragraph 8 herein, and that they do not guarantee or insure any of the future annuity payments. Upon the purchase of the annuity contract, the Secretary of Health and Human Services and the United States of America are released from any and all obligations with respect to future annuity payments.

12. Petitioner and her attorney represent that they have identified to respondent all known sources of payment for items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), including 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.

13. 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.

14. The parties and their attorneys further agree and stipulate that, except for the award for attorneys' fees and litigation costs, and past unreimbursable expenses, the money provided pursuant to this Stipulation either immediately or as part of the annuity contract, will be used solely for petitioner's benefit 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).

15. In return for the payments described in paragraph 8, petitioner, in her individual capacity, on behalf of her 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 petitioner resulting from, or alleged to have resulted from, the Hep A and/or Tdap vaccinations administered on February 21, 2007, as alleged by petitioner in a petition for vaccine compensation filed on or about February 5, 2010, in the United States Court of Federal Claims as petition No. 10-468V.

16. If petitioner should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

17. 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.

18. 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. 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.

19. Petitioner hereby authorizes respondent to disclose documents filed by petitioner in this case consistent with the Privacy Act and the routine uses described in the National Vaccine Injury Compensation Program System of Records, No. 09-15-0056.

20. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that petitioner suffered the onset of TEN as the result of her Hep A and/or Tdap vaccinations or that the vaccines caused her TEN, or any other injury.

21. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

END OF STIPULATION

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Respectfully submitted,

PETITIONER:



**ATTORNEY OF RECORD FOR
PETITIONER:**

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Dated: 6-21-12