

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
E-Filed: July 19, 2012

* * * * *	*	
ADEENA SANTIAGO and	*	UNPUBLISHED
ERICK SANTIAGO, SR., as the	*	
Natural Parents of ERICK	*	No. 11-342V
SANTIAGO, JR., Decedent,	*	
	*	Chief Special Master
Petitioners,	*	Campbell-Smith
	*	
v.	*	Joint Stipulation on Damages;
	*	Measles-Mumps-Rubella (“MMR”)
SECRETARY OF THE	*	Vaccine; Varicella Vaccine;
DEPARTMENT OF	*	Diphtheria-Tetanus Acellular-
HEALTH AND HUMAN SERVICES,	*	Pertussis (“DTaP”) Vaccine;
	*	Pneumococcal Conjugate (“PCV7”)
Respondent.	*	Vaccine; Exacerbation of Pre-
	*	Existing Reactive Airway Disease
* * * * *	*	and Asthma; Death

Mark T. Sadaka, Sadaka Associates, LLC, Englewood, NJ, for petitioners.
Lisa A. Watts, U.S. Dep’t of Justice, Washington, DC, for respondent.

DECISION¹

On May 26, 2011, Adeena and Erick Santiago (“petitioners”) filed a petition on behalf of their deceased son, Eric Santiago, Jr. (“Erick”), seeking compensation under the

¹ Because this decision contains a reasoned explanation for the undersigned’s action in this case, the undersigned intends to post this decision on the United States Court of Federal Claims’ website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction “of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, “the entire” decision will be available to the public. Id.

National Vaccine Injury Compensation Program (“Vaccine Program”).² Petitioners filed an amended petition on April 11, 2012.

Petitioners allege that the measles-mumps-rubella (“MMR”) and varicella vaccines administered to Erick on November 20, 2008, and the diphtheria-tetanus-acellular-pertussis (“DTaP”) and pneumococcal conjugate (“PCV7”) vaccines administered to Erick on May 21, 2009, exacerbated his pre-existing reactive airway disease and asthma, resulting in, or substantially contributing to, his death on May 29, 2009. Pet. at 1; Am. Pet. at 1.

Respondent denies that Erick’s claimed injuries were caused or exacerbated by the MMR, varicella, DTaP, or PCV7 vaccines, and further denies that Erick’s death occurred as a result of a vaccine-related injury. Stip. at ¶ 6.

Nevertheless, on July 19, 2012, counsel for the parties filed a joint stipulation, which is attached to this decision, stating that a decision should be entered awarding compensation. See Stip.

The parties stipulated that petitioners should receive the following compensation payment:

A lump sum of **\$25,000.00**, in the form of a check payable to petitioners, as administrators/executors of Erick’s estate.

This amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a). Stip. at ¶ 8.

The parties further stipulated that they had not yet reached an agreement with respect to attorneys’ fees and costs. Stip. at ¶ 9.

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-1 to -34 (2006) (“Vaccine Act” or “Act”). All citations in this decision to individual sections of the Act are to 42 U.S.C.A. § 300aa.

The undersigned finds the stipulation reasonable, adopts it as the decision of the court on damages, and approves the requested amount for petitioners' compensation.

Accordingly, an award should be made in the form of a check payable to petitioners in the amount of **\$25,000.00**. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court **SHALL ENTER JUDGMENT** in accordance with the terms of the parties' stipulation.³

IT IS SO ORDERED.

s/Patricia E. Campbell-Smith
Patricia Campbell-Smith
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

ADEENA SANTIAGO and ERICK)	
SANTIAGO, SR., as the Natural Parents of)	<u>ECF</u>
ERICK SANTIAGO, JR., Decedent,)	
)	
Petitioner,)	
v.)	No. 11-342V
)	Chief Special Master
SECRETARY OF HEALTH)	Patricia Campbell-Smith
AND HUMAN SERVICES,)	
)	
Respondent.)	

STIPULATION

The parties hereby stipulate to the following matters:

1. On May 26, 2011, Adeena and Erick Santiago ("petitioners"), 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"), on behalf of their deceased son, Erick Santiago, Jr. ("Erick"). Petitioners filed an amended petition on April 11, 2012. The petition and amended petition seek compensation for injuries and death allegedly related to Erick's receipt of measles-mumps-rubella ("MMR") vaccine, varicella vaccine, diphtheria-tetanus-acellular pertussis ("DTaP") vaccine, and pneumococcal conjugate vaccine ("PCV7"), which vaccines are contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. Erick received the MMR vaccine and varicella vaccine on November 20, 2008, and the DTaP and PCV7 vaccines on May 21, 2009.
3. The vaccines were administered within the United States.
4. Petitioners allege *inter alia* that the vaccines administered to Erick on December 10,

2008, and May 21, 2009, exacerbated his pre-existing reactive airway disease and asthma resulting in, or substantially contributing to, his death on May 29, 2009.

5. Petitioners represent that there has been no prior award or settlement of a civil action for damages on Erick's behalf as a result of his alleged injuries resulting in death.

6. Respondent denies that Erick's claimed injuries were caused or exacerbated by the MMR, varicella, DTaP, or PCV7 vaccines, and denies that Erick's death occurred as the result of a vaccine-related injury.

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 \$25,000.00 in the form of a check payable to petitioners as administrators/executors of Erick's estate. This amount represents compensation for all elements of compensation 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. 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. Petitioners represent that they presently are, or within 90 days of the date of judgment will become, duly authorized to serve as administrators/executors of Erick's estate under the laws of the State of New York.

12. In return for the payments described in paragraph 8 and 9, petitioners, in their individual capacities and as legal representatives of Erick, on behalf of themselves, Erick, and his heirs, executors, administrators, successors or assigns, do forever irrevocably and unconditionally release, acquit and discharge the United States of America 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, 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 personal injuries to or death of Erick Santiago, Jr., resulting from, or alleged to have resulted from, the MMR, varicella, DTaP, and PCV7 vaccines administered to him on November 20, 2008 and May 21, 2009, as alleged by petitioners in a petition for vaccine compensation filed on May 26, 2011, and an amended petition on April 11, 2012, in the United States Court of Federal Claims as petition No. 11-342V.

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 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.

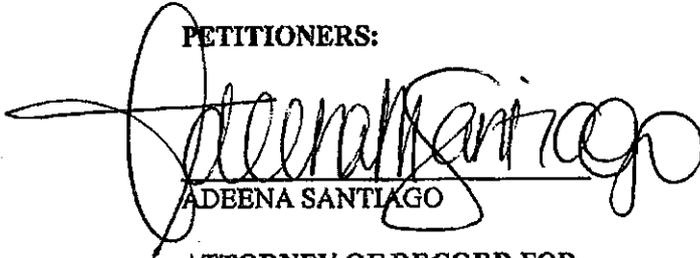
15. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the vaccines administered to Erick on November 20, 2008 or May 21, 2009, caused him to suffer any injury; or that Erick's death on May 29, 2009, occurred as the result of a vaccine-related injury.

16. All rights and obligations of petitioners hereunder shall apply equally to petitioners' heirs, executors, administrators, successors, and/or assigns as legal representatives of the estate of Erick Santiago, Jr.

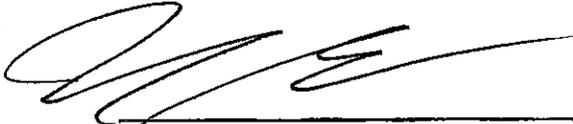
END OF STIPULATION

Respectfully submitted,

PETITIONERS:


ADEBENA SANTIAGO

**ATTORNEY OF RECORD FOR
PETITIONERS:**



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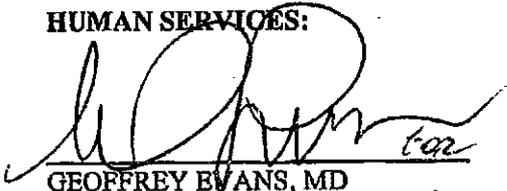

ERICK SANTIAGO

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Dated: 7-19-2012