

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

(Filed: March 9, 2006)

MICHAEL DOHERTY,)	
father and next friend of his son,)	
DREW DOHERTY,)	
)	
Petitioner,)	
)	
v.)	No. 01-0393V
)	DO NOT PUBLISH
SECRETARY OF)	
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

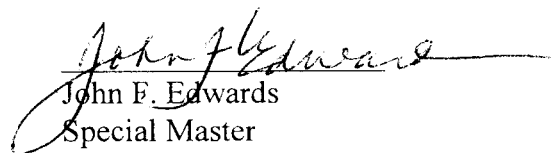
DECISION DIRECTING ENTRY OF JUDGMENT¹

On March 3, 2006, the parties filed a stipulation. The special master has reviewed thoroughly the stipulation. He adopts completely the stipulation. Therefore, in the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment based upon the stipulation in petitioner's favor.²

¹ 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 trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and 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.*

² Under Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review. Then, under Vaccine Rule 12(a), petitioner may expedite payment by filing an election to accept the judgment.

The clerk of court shall send petitioner's copy of this decision to petitioner by overnight express delivery.


John F. Edwards
Special Master

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

RECEIVED & FILED

MAR 3 2006

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OFFICE OF THE CLERK
U.S. COURT OF FEDERAL CLAIMS

MICHAEL DOHERTY, father)
and next friend of his son,)
DREW DOHERTY,)
)
Petitioner,)
)
v.) No. 01-393V
) Special Master
SECRETARY OF HEALTH AND HUMAN) John F. Edwards
SERVICES,)
)
Respondent.)
_____)

STIPULATION

It is hereby stipulated by and between the parties, the following matters:

1. On behalf of his son, Drew R. Doherty ("Drew"), 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 Drew's receipt of the hepatitis B vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 U.S.C. § 300aa-14(a); 42 C.F.R. § 100.3(a) (VIII) (2002).
2. Drew received his third hepatitis B immunization on July 10, 1998.
3. The vaccine was administered within the United States.

4. Petitioner alleges that Drew developed juvenile dermatomyositis as a result of the hepatitis B vaccination.

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

6. Respondent's Rule 4 Report denies that Drew's juvenile dermatomyositis was caused by his hepatitis B 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 payment:

A lump sum of \$800,000.00 in the form of a check payable to petitioner. This amount represents compensation for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which petitioner would be entitled, including past and future pain and suffering, lost earnings, past unreimbursable expenses, and future medical expenses.

9. Payments made pursuant to paragraph 8 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.

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 special master shall preside over further proceedings to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

11. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs and past unreimbursable expenses, the money provided pursuant to this Stipulation, will be used solely for the benefit of Drew 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. Petitioner represents that he presently is, or within 90 days of the date of judgment will become, duly authorized to serve as guardian/conservator of Drew's estate under the laws of the State of Arizona. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing his appointment as guardian/conservator of Drew's estate.

13. In return for the payments described in paragraphs 8 and 10, petitioner, in his individual capacity and as legal representative of Drew, on behalf of himself, Drew, and his 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 Drew resulting from, or alleged to have resulted from, the hepatitis B vaccination administered to Drew on July 10, 1998, as alleged by petitioner in a petition for vaccine compensation filed on or about July 6, 2001, in the United States Court of Federal Claims as petition No. 01-393V.

14. In the event Drew should die prior to the Secretary making the payment 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.

15. In the event 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.

16. 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 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.

17. All rights and obligations of petitioner hereunder shall apply equally to his successors and assigns as legal representatives of Drew Doherty.

END OF STIPULATION

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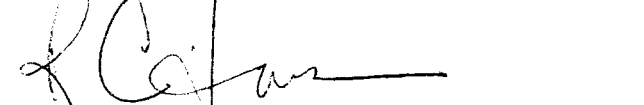
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Respectfully submitted,

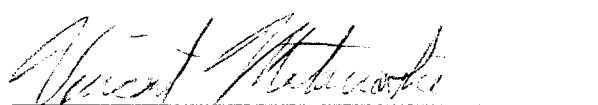
PETITIONER:


MICHAEL J. DOHERTY

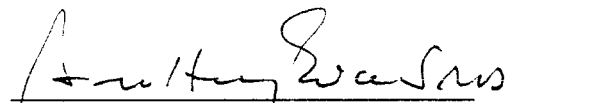
**ATTORNEY OF RECORD FOR
PETITIONER:**


RONALD C. HOMER, ESQ.
Conway, Homer & Chin-Caplan, P.C.
16 Shawmut Street
Boston, MA 02116
(617) 695-1990

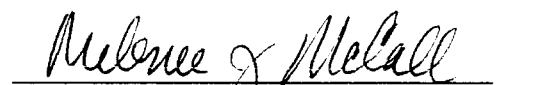
**AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:**


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

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


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

**ATTORNEY OF RECORD FOR
RESPONDENT:**


MELONIE J. MCCALL
Trial Attorney
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
(202) 616-4098

Dated: 3/3/06