

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 09-801 V

Filed: March 24, 2011

Not for Publication

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NICOLE ELIZABETH DOW and PHILIP \*  
RYAN TUFTS, as Parents and Natural \*  
Guardians of ALEXIA GRACE TUFTS \*

Petitioners, \*

v. \*

SECRETARY OF THE DEPARTMENT \*  
OF HEALTH AND HUMAN SERVICES, \*

Respondent. \*

\*\*\*\*\*

Christina J. Kazepis, Great Neck, NY, for petitioners.  
Julia W. McInerney, Washington, DC, for respondent.

Damages Decision based on Stipulation  
RotaTeq immunization, intussusception

**MILLMAN, Special Master**

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

On March 24, 2011, the parties filed the attached stipulation, in which they agreed to settle this case and described the settlement terms. Petitioners alleged that Alexia Grace Tufts suffered from intussusception following a RotaTeq vaccination. Respondent denies that Alexia's intussusception was caused in fact by the RotaTeq vaccination. Nonetheless, the parties agreed to resolve this matter informally.

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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, and awards compensation in the amount and on the terms set forth therein. Pursuant to the stipulation, the court awards a lump sum of **\$15,500.00** in the form of a check made payable to petitioners as guardians/conservators of Alexia's estate.

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.**

Dated: March 24, 2011

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

NICOLE ELIZABETH DOW and PHILIP	)	
RYAN TUFTS, as parents and natural	)	
guardians of ALEXIA GRACE TUFTS,	)	No. 09-801V
a minor,	)	Special Master Laura Millman
	)	ECF
Petitioners,	)	
	)	
	)	
SECRETARY OF HEALTH AND	)	
HUMAN SERVICES	)	
	)	
Respondent.	)	
	)	

**STIPULATION**

The parties hereby stipulate to the following matters:

1. Nicole Elizabeth Dow and Philip Ryan Tufts (“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”). The petition seeks compensation for injuries allegedly related to Alexia’s receipt of a RotaTeq vaccine, which vaccine is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3 (a).

2. Alexia received her RotaTeq immunization on April 4, 2007.

3. The vaccine was administered within the United States.

4. Petitioners allege that Alexia suffered intussusception that was caused in fact by the vaccination.

5. Petitioners represent that there has been no prior award or settlement of a civil action for damages on Alexia’s behalf as a result of his condition.

6. Respondent denies that the RotaTeq vaccine caused Alexia’s intussusception; denies

that any current disabilities are sequelae of her alleged injury; and denies that Alexia 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 \$15,500.00 in the form of a check payable to petitioners as guardians/conservators of Alexia'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 Alexia 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 Alexia's estate under the laws of the State of Maine. No payments pursuant to this Stipulation shall be made until petitioners provide the Secretary with documentation establishing their appointment as guardians/conservators of Alexia's estate. If petitioners are not authorized by a court of competent jurisdiction to serve as guardians/conservators of the estate of Alexia Grace Tufts at the time a payment pursuant to this Stipulation is to be made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as guardians/conservators of the estate of Alexia Grace Tufts upon submission of written documentation of such appointment to the Secretary.

14. In return for the payments described in paragraph 8 and 9, petitioners, in their individual capacities, and as legal representatives of Alexia, on behalf of themselves, Alexia, and her 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. § 300 aa-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 Alexia resulting from, or alleged to have resulted from, the RotaTeq vaccination administered on April 4, 2007, as alleged by petitioners in a petition for vaccine compensation filed on or about November 20, 2009, in the United States Court of Federal Claims as petition No. 09-801V.

15. If Alexia 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 RotaTeq vaccine caused Alexia's intussusception; that any current disabilities are sequelae of her alleged injury; or that Alexia 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 Alexia Grace Tufts.

END OF STIPULATION

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Respectfully submitted,

**PETITIONERS:**


  
NICOLE ELIZABETH DOW

  
PHILIP/RYAN TUFTS

**ATTORNEY OF RECORD FOR  
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Dated: 3/24/11

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