

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 11-883V

Filed: September 18, 2013

Not for Publication

ANGELA KIDD and SIDNEY KIDD, *
as Administrators of the Estate of *
COLIN KIDD, deceased, *

Petitioners, *

v. *

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Respondent. *

Ronald C. Homer, Boston, MA, for petitioners.

Claudia B. Gangi, Washington, DC, for respondent.

Damages decision based on stipulation;
varicella vaccine; meningococcal vaccine;
tetanus-diphtheria-acellular-pertussis
vaccine; influenza vaccine;
leukoencephalopathy

MILLMAN, Special Master

DECISION AWARDING DAMAGES¹

On September 18, 2013, the parties filed the attached stipulation in which they agreed to settle this case and described the settlement terms. Petitioners allege that Colin suffered leukoencephalopathy and subsequently died as a result of his November 25, 2009 receipt of varicella, meningococcal, tetanus-diphtheria-acellular-pertussis, and influenza vaccines.

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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.

Respondent denies that any of the vaccines caused Colin's leukoencephalopathy, any other injury, or his death. Nonetheless, the parties agreed to resolve this matter informally.

The undersigned finds the terms of the stipulation to be reasonable. The court hereby adopts the parties' said stipulation, attached hereto, and awards compensation in the amount and on the terms set forth therein. Pursuant to the stipulation, the court awards a lump sum of **\$300,000.00**, representing compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a). The award shall be in the form of a check for **\$300,000.00** made payable to petitioners, as the legal administrators of Colin'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.²

IT IS SO ORDERED.

Dated: September 18, 2013

s/ Laura D. Millman
Laura D. Millman
Special Master

² Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party, either separately or jointly, filing a notice renouncing the right to seek review.

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

ANGELA KIDD and SIDNEY KIDD, as Administrators of the Estate of COLIN KIDD, deceased,)	
)	
Petitioners,)	No. 11-883V
)	Special Master Millman
v.)	ECF
)	
SECRETARY OF HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	

STIPULATION

The parties hereby stipulate to the following matters:

1. A petition for vaccine compensation on behalf of the estate of Colin Kidd ("Colin") was filed under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-10 to -34 (the "Vaccine Program"). The petition seeks compensation for Colin's injury and death, which petitioners allege were caused by his receipt of the Varicella vaccine, Meningococcal vaccine, Tetanus-Diphtheria-acellular Pertussis ("Tdap") vaccine, and influenza vaccine, which vaccines are contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. Colin received immunizations on November 25, 2009.
3. The vaccines were administered within the United States.
4. Petitioners allege that Colin suffered from leukoencephalopathy as a result of his vaccinations, and that he subsequently died as a result of his alleged vaccine-related injury.
5. Petitioners represent that there has been no prior award or settlement of a civil action

for damages on behalf of Colin Kidd as a result of his alleged injury or his death.

6. Respondent denies that any of the vaccinations administered to Colin caused a leukoencephalopathy, or any other injury, and denies that his November 25, 2009 immunizations caused his death.

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 a lump sum payment of \$300,000.00 in the form of a check payable to petitioners, as legal administrator of Colin Kidd'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. Sec. 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. sec. 1396 et seq.)), or by entities that provide health services on a pre-paid basis.

11. Payment 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.

12. Petitioners represent that they presently are, or within 90 days of the date of judgment will become, duly authorized to serve as conservators/legal representatives of Colin Kidd's estate under the laws of the State of South Carolina.

13. In return for the payments described in paragraphs 8 and 9, petitioners, in their individual capacities and as legal representatives of the estate of Colin Kidd, on behalf of themselves, and on behalf of Colin Kidd's 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 Colin Kidd resulting from, or alleged to have resulted from, vaccinations administered on November 25, 2009, as alleged in a petition for vaccine compensation filed on or about December 19, 2011, in the United States Court of Federal Claims as petition No. 11-883V.

14. 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.

15. 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.

16. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that any of the vaccinations administered to Colin Kidd on November 25, 2009, caused a leukoencephalopathy or any other injury or his death.

17. 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 Colin Kidd.

END OF STIPULATION

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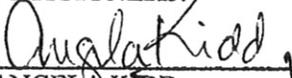
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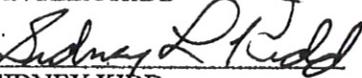
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Respectfully submitted,

PETITIONERS:


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SIDNEY KIDD

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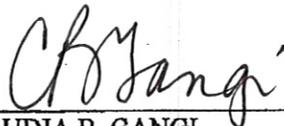
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Dated: 9-18-13