

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 11-787V

September 28, 2012

Not for Publication

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LORENZO THOMAS and ALINA THOMAS, \*  
as parents and natural guardians of TNT, \*  
a minor, \*

Petitioners, \*

v. \*

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

Respondent. \*

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Lorraine J. Mansfield, Las Vegas, NV, for petitioners.  
Justine E. Daigneault, Washington, DC, for respondent.

Motion to dismiss; failure  
to provide expert evidence  
in support of allegation;  
mitral valve regurgitation

**MILLMAN, Special Master**

### DECISION<sup>1</sup>

On November 21, 2011, petitioners filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. § 300aa-10-34, alleging that *Pediatric* (DTaP, Hepatitis B, IPV) and

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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 Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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). 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 redact 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 redact such material from public access.

rotovirus vaccines caused their son TNT heart damage. In light of the fact that TNT's pediatric cardiothoracic surgeon opined that TNT's mitral valve regurgitation probably had been ongoing since birth, petitioners through their counsel amended their allegation from causation to significant aggravation of TNT's preexisting mitral valve regurgitation. However, petitioners could not find a medical expert to support their allegation. On September 27, 2012, after four and one-half months of searching, petitioners' counsel requested a dismissal decision.

## FACTS

TNT was born on May 10, 2010.

On July 13, 2010, when he was two months old, TNT received Pediarix (DTaP, Hepatitis B, IPV) and Rotarix vaccines. Med. recs. Ex. 4, at 18, 19; Ex. 5, at 2.

On July 14, 2010, TNT was brought to St. Rose Dominican Hospital Siena Campus where Dr. Abraham Rothman, an interventional cardiologist, saw him. TNT had a history of respiratory distress and a slight fever after receiving vaccinations. He was eating well until the last day. Then he started breathing faster with some distress. A chest x-ray showed cardiomegaly and pulmonary edema. An echocardiogram showed severe mitral regurgitation and a very dilated left atrium. He also had mild to moderate tricuspid regurgitation with a peak velocity in excess of four m/sec suggesting severe pulmonary hypertension. Dr. Rothman's impressions were severe mitral regurgitation, enlarged left atrium, significant pulmonary edema, and pulmonary hypertension. Med. recs. Ex. 8, at 12.

From July 15 to 29, 2010, TNT was at Sunrise Hospital, having been transferred from St. Rose Dominican Hospital. Med. recs. Ex. 4, at 63. He was diagnosed with congenital mitral regurgitation and was to have surgical repair of his mitral valve. *Id.* On July 15, 2010, Dr. Michael Ciccolo, TNT's cardiothoracic surgeon, noted TNT had very severe mitral regurgitation with a massively enlarged left atrium. Med. recs. Ex. 8, at 18-19. Dr. Ciccolo noted, "It is unclear when this all started, but with the degree of dilatation of the atrium, it has been going on for some time and in all likelihood since birth." Med. recs. Ex. 8, at 19.

## DISCUSSION

To satisfy their burden of proving causation in fact, petitioners must prove by preponderant evidence: "(1) a medical theory causally connecting the vaccination and the injury; (2) a logical sequence of cause and effect showing that the vaccination was the reason for the injury; and (3) a showing of a proximate temporal relationship between vaccination and injury." Althen v. Sec'y of HHS, 418 F.3d 1274, 1278 (Fed. Cir. 2005). In Althen, the Federal Circuit quoted its opinion in Grant v. Sec'y of HHS, 956 F.2d 1144, 1148 (Fed. Cir. 1992):

A persuasive medical theory is demonstrated by "proof of a logical sequence of cause and effect showing that the vaccination was the

reason for the injury[.]” the logical sequence being supported by “reputable medical or scientific explanation[.]” *i.e.*, “evidence in the form of scientific studies or expert medical testimony[.]”

Without more, "evidence showing an absence of other causes does not meet petitioners' affirmative duty to show actual or legal causation." Grant, 956 F.2d at 1149. Mere temporal association is not sufficient to prove causation in fact. Id. at 1148.

Petitioners must show not only that but for the vaccines, TNT would not have severe mitral valve regurgitation or would have had less severe mitral valve regurgitation, but also that the vaccines were a substantial factor in causing, or in this case significantly aggravating, his severe mitral valve regurgitation. Shyface v. Sec’y of HHS, 165 F.3d 1344, 1352 (Fed. Cir. 1999).

The Vaccine Act, 42 U.S.C. § 300aa-33(4), defines “significant aggravation” as “any change for the worse in a preexisting condition which results in markedly greater disability, pain, or illness accompanied by substantial deterioration of health.”

The physicians in the medical records, particularly Dr. Ciccolo, TNT’s cardiothoracic surgeon, attribute TNT’s mitral valve regurgitation to a congenital defect. Dr. Ciccolo explains that the massive expansion of TNT’s left atrium, one of the four chambers of the heart, probably began at birth due to the massive size of the atrium when TNT was brought into the hospital. There is nothing in the record to suggest that TNT’s two-month vaccinations played any role in his congestive heart failure and pulmonary hypertension.

Since petitioners filed their petition, they have not provided evidence from a medical expert to make a prima facie case that the vaccinations at issue significantly aggravated TNT’s severe mitral valve regurgitation. They have not produced medical records or medical expert opinion to substantiate that the vaccinations significantly aggravated TNT’s preexisting condition. The Vaccine Act does not permit the undersigned to rule in favor of petitioners based only on their allegations unsupported by medical records or medical opinion. 42 U.S.C. § 300aa-13(a)(1).

Petitioners’ motion to dismiss is **GRANTED**.

### CONCLUSION

This petition is **DISMISSED**. 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>

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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.

**IT IS SO ORDERED.**

September 28, 2012  
DATE

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