

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

 CHRISTOPHER LOVING and CARLA *
 LOVING, parents of CAMILLE LOVING, *
 *
 Petitioners, *
 *
 v. *
 *
 SECRETARY OF HEALTH *
 AND HUMAN SERVICES, *
 *
 Respondent. *
 *

No. 02-469V
 Special Master Christian J. Moran

 Filed: September 20, 2013

 Stipulation; diphtheriatetanus-
 acellular pertussis ("DTaP") vaccine;
 infantile spasms; seizure disorder;
 developmental delays.

William Dobreff, Dobreff & Dobreff, Clinton Township, MI, for Petitioners;
Catherine P. Shonk, United States Department of Justice, Washington, D.C., for Respondent.

UNPUBLISHED DECISION¹

On September 18, 2013, respondent filed a joint stipulation concerning the petition for compensation filed by Christopher and Carla Loving, on behalf of their daughter, Camille Loving, on May 5, 2002. In their petition, petitioners alleged that the diphtheria tetanus-acellular pertussis ("DTaP")² vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a), and which their daughter received on December 5, 2000, and March 27, 2001, significantly aggravated Camille's pre-existing infantile spasms and caused her to suffer a seizure disorder and developmental delays. Petitioners further allege that Camille suffered the residual effects of this injury for more than six months. Petitioners represent that there has been no prior award or settlement of a civil action for damages on Camille's behalf as a result of her condition.

¹The E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002), requires that the Court post this decision on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

² Although the petition alleges that Camille received "DTP/DPT" vaccines, the medical records reflect that Camille received DTaP vaccines.

Respondent denies that the DTaP vaccine caused or significantly aggravated Camille's infantile spasms, denies that residual effects of the alleged significant aggravation persisted for six months, and denies that her current disabilities are sequelae of her alleged injury.

Nevertheless, the parties agree to the joint stipulation, attached hereto as Appendix A. The undersigned finds said stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

Damages awarded in that stipulation include:

- A. A lump sum of \$380,000.00 in the form of a check payable to petitioners, Christopher and Carla Loving, as guardians/conservators of Camille's estate;**
- B. A lump sum of \$20,000.00 in the form of a check payable to petitioners, Christopher and Carla Loving, as guardians/conservators of Camille's estate; for past unreimbursed expenses; and,**
- C. A lump sum of \$850,000.00 in the form of a check payable to the life insurance company from which the annuity will be purchased (the "Life Insurance Company") under the conditions stated in paragraphs 9 and 10 of this Stipulation attached hereto as Appendix A.**

The above amounts represent compensation for all damages that would be available under 42U.S.C. §300aa-1 5(a).

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 02-469V according to this decision and the attached stipulation.³ Pursuant to Vaccine Rule 28.1, the Clerk shall provide a copy of this decision to the presiding judge.

Any questions may be directed to my law clerk, Mary Holmes, at (202) 357-6353.

IT IS SO ORDERED.

s/Christian J. Moran
Christian J. Moran
Special Master

³ Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.

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

CHRISTOPHER and CARLA LOVING,)	
Parents of CAMILLE LOVING,)	No. 02-469V
)	Special Master Moran
)	
Petitioners,)	
v.)	
)	
SECRETARY OF HEALTH AND)	
HUMAN SERVICES,)	
)	
Respondent.)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Christopher and Carla Loving, 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"), on behalf of their minor daughter, Camille Loving ("Camille"). The petition seeks compensation for injuries allegedly related to Camille's receipt of the diphtheria-tetanus-acellular pertussis ("DTaP")¹ vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Camille received the DTaP vaccines on December 5, 2000, and March 27, 2001.
3. The vaccines were administered within the United States.
4. Petitioners allege that Camille sustained the first symptom or manifestation of a significant aggravation of her pre-existing infantile spasms as a result of her March 27, 2001 vaccination. Petitioners further allege she suffers a seizure disorder and developmental delay as

¹ Although the petition alleges that Camille received "DTP/DPT" vaccines, the medical records reflect that Camille received DTaP vaccines.

a result of this injury, and that Camille has experienced the residual effects of this injury for more than six months.

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

6. Respondent denies that the DTaP vaccine caused or significantly aggravated Camille's infantile spasms, denies that residual effects of the alleged significant aggravation persisted for six months, and denies that her current disabilities are sequelae of her alleged 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 payments:

- a. A lump sum of \$380,000.00 in the form of a check payable to petitioners as guardians/conservators of Camille's estate;
- b. A lump sum of \$20,000.00 in the form of a check payable to petitioners for past unreimbursed expenses; and,
- c. A lump sum of \$850,000.00 in the form of a check payable to the life insurance company from which the annuity will be purchased (the "Life Insurance Company") under the conditions stated in paragraphs 9 and 10 of this Stipulation below.

The above amounts represent compensation for all damages that would be available under 42 U.S.C. §300aa-15(a).

9. The Life Insurance Company must have a minimum of \$250,000,000 capital and surplus, exclusive of any mandatory security valuation reserve. The Life Insurance Company must have one of the following ratings from two of the following rating organizations:

- a. A.M. Best Company: A++, A+, A+g, A+p, A+r, or A+s;
- b. Moody's Investor Service Claims Paying Rating: Aa3, Aa2, Aa1, or Aaa;
- c. Standard and Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+, or AAA;
- d. Fitch Credit Rating Company, Insurance Company Claims Paying Ability Rating: AA-, AA, AA+, or AAA.

10. The Secretary of Health and Human Services agrees to purchase an annuity contract² from the Life Insurance Company at a cost of \$850,000.00 for the benefit of Camille Loving, pursuant to which the Life Insurance Company will agree to make payments periodically to petitioners, as guardians/conservators of Camille's estate, for future vaccine-related expenses as follows:

Beginning 90 days from the date of purchase of the annuity, \$1,680.00 payable monthly for Camille's lifetime, increasing at the rate of 2.5% compounded annually from the date payment begins.

The purchase price of the annuity shall not exceed \$850,000.00, excluding any increased cost associated with the purchase of a guarantee if the Secretary elects to purchase such a guarantee with respect to this annuity. The above amounts represent an estimate of the annuity stream that could be purchased for \$850,000.00. In the event that the cost of the annuity payments set forth above varies from \$850,000.00 due to market rate fluctuations on the date the annuity is purchased, the payment described above shall be adjusted downward or upward accordingly to ensure that the total cost of the annuity will not be greater than or less than \$850,000.00.

Petitioners will continue to receive the annuity payments from the Life Insurance Company only so long as Camille is alive at the time that a particular payment is due. Written notice to the

² To satisfy the conditions set forth herein, in respondent's discretion, respondent may purchase one or more annuity contracts from one or more life insurance companies.

Secretary of Health and Human Services and the Life Insurance Company shall be provided within twenty (20) days of Camille's death.

11. The annuity contract will be owned solely and exclusively by the Secretary of Health and Human Services and will be purchased as soon as practicable following the entry of a judgment in conformity with this Stipulation. The parties stipulate and agree that the Secretary of Health and Human Services and the United States of America are not responsible for the payment of any sums other than the amounts set forth in paragraph 8 herein and the amounts awarded pursuant to paragraph 12 herein, and that they do not guarantee or insure any of the future annuity payments. Upon the purchase of the annuity contract, the Secretary of Health and Human Services and the United States of America are released from any and all obligations with respect to future annuity payments.

12. 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.

13. Petitioners and their attorney represent that they have identified to respondent all known sources of payment for items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), including 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.

14. Payments made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 12 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

15. 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 either immediately or as part of the annuity contract, will be used solely for the benefit of Camille 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).

16. 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 Camille's estate under the laws of the State of Maryland. No payments pursuant to this Stipulation shall be made until petitioners provide the Secretary with documentation establishing their appointment as guardians/conservators of Camille's estate. If petitioners are not authorized by a court of competent jurisdiction to serve as guardians/conservators of the estate of Camille Loving 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 guardian/conservator of the estate of Camille Loving upon submission of written documentation of such appointment to the Secretary.

17. In return for the payments described in paragraphs 8 and 12, petitioners, in their individual capacity and as legal representatives of Camille Loving, on behalf of themselves, Camille, 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. § 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 Camille Loving resulting from, or alleged to have resulted from the DTaP vaccines administered on December 5, 2000, and March 27, 2001, as alleged by petitioners in a petition for vaccine compensation filed on or about May 9, 2002, in the United States Court of Federal Claims as petition No. 02-469V.

18. If Camille should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

19. 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.

20. 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 12 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.

21. Petitioners hereby authorize respondent to disclose documents filed by petitioners in this case consistent with the Privacy Act and the routine uses described in the National Vaccine Injury Compensation Program System of Records, No. 09-15-0056.

22. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the DTaP vaccine caused or significantly aggravated Camille's infantile spasms, seizure disorder, or developmental delay; or that Camille's current disabilities are sequelae of her alleged vaccine-related injury.

23. All rights and obligations of petitioners hereunder shall apply equally to petitioners' heirs, executors, administrators, successors, and/or assigns as legal representatives of Camille Loving.

END OF STIPULATION

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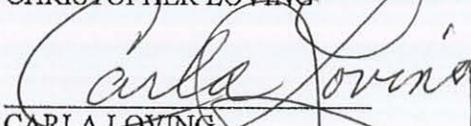
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Respectfully submitted,

PETITIONERS:


CHRISTOPHER LOVING


CARLA LOVING

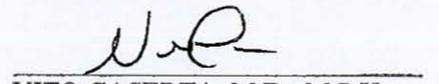
**ATTORNEY OF RECORD FOR
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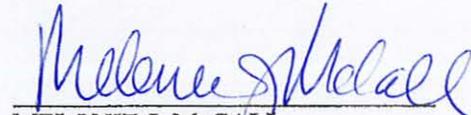
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Dated: 9/18/13