

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

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DEBORAH and JAMEY McBEE,
Individually, and DEBORAH McBEE, as
the Court appointed personal administrator
of the Estate of KENNETH BLAKE McBEE,\*

No. 09-736V
Special Master Christian J. Moran

Petitioners,\*

Filed: June 22, 2012

v.\*

SECRETARY OF HEALTH
AND HUMAN SERVICES,\*

Stipulation; hepatitis A vaccine;
anaphylactic shock; seizures;
cardiac arrest; irreversible brain
damage; death.\*

Respondent.\*

\*\*\*\*\*

UNPUBLISHED DECISION<sup>1</sup>

Terry D. Jackson, Terry D. Jackson, P.C., Atlanta, GA, for Petitioners;
Melonie J. McCall, U.S. Department of Justice, Washington, D.C., for Respondent.

On June 21, 2012, the parties filed a joint stipulation concerning the petition for
compensation filed by Deborah and Jamey McBee, individually, and Deborah McBee, as the
court appointed personal administrator of the estate of her son, Kenneth Blake McBee (“Blake”),
on October 28, 2009. In their petition, the petitioners alleged that the hepatitis A vaccine, which
is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a), and which Blake
received on October 29, 2007, caused Blake to suffer anaphylactic shock, seizures, and cardiac
arrest. Petitioners further allege that Blake developed irreversible brain damage and died on
October 30, 2007, as sequelae of his injury.

<sup>1</sup> The 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.

Respondent denies that the hepatitis A vaccine caused Blake to suffer anaphylactic shock, seizures, cardiac arrest, irreversible brain damage; and denies that Blake's death was a result of the hepatitis A vaccine.

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 payment of \$175,000.00 in the form of a check payable to Deborah McBee as the legal representative of Blake's estate. This amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a).**

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 9-790V according to this decision and the attached stipulation.

Any questions may be directed to my law clerk, Jennifer C. Chapman, at (202) 357-6358.  
IT IS SO ORDERED.

s/Christian J. Moran

Christian J. Moran  
Special Master



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

6. Respondent denies that the hep A vaccine caused Blake to suffer anaphylactic shock, seizures, cardiac arrest, irreversible brain damage; and denies that Blake's death was a result of the hep A vaccine.

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 \$175,000.00 in the form of a check payable to Deborah McBee as the legal representative of Blake'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. Payments 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.

11. Petitioners represent that they presently are, or within 90 days of the date of judgment will become, duly authorized to serve as the legal representatives of Blake's estate under the laws of the State of Georgia. No payments pursuant to this Stipulation shall be made until petitioners provide the Secretary with documentation establishing their appointment as legal representatives of Blake's estate. If petitioners are not authorized by a court of competent jurisdiction to serve as legal representatives of the estate of Kenneth Blake McBee 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 legal representative of the estate of Kenneth Blake McBee upon submission of written documentation of such appointment to the Secretary.

12. In return for the payments described in paragraphs 8 and 9, petitioners, in their individual capacity and as legal representatives of Blake, on behalf of themselves, Blake, and his 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 Blake resulting from, or alleged to have resulted from, the hep A vaccination administered on October 29, 2007, as alleged by petitioners in a petition for vaccine compensation filed on or about October 28, 2009, in the United States Court of Federal Claims as petition No. 09-736V.

13. 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.

14. 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.

15. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that Blake suffered anaphylactic shock, seizures, cardiac arrest, irreversible brain damage, or any other injury as a result of the hep A vaccine or that the hep A vaccine caused Blake's death.

16. 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 Kenneth Blake McBee.

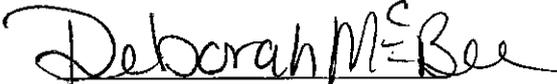
END OF STIPULATION

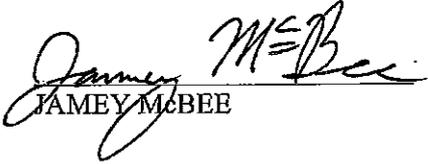
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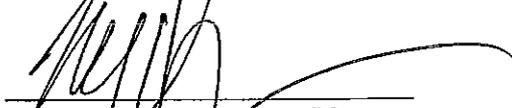
Respectfully submitted,

**PETITIONERS:**

  
DEBORAH McBEE

  
JAMEY McBEE

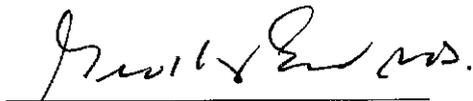
**ATTORNEY OF RECORD FOR  
PETITIONERS:**

  
TERRY D. JACKSON, ESQ.  
Terry D. Jackson, PC  
Attorneys at Law  
600 Edgewood Avenue  
Atlanta, GA 30312  
(404) 659-2400

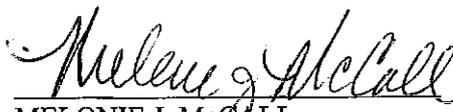
**AUTHORIZED REPRESENTATIVE  
OF THE ATTORNEY GENERAL:**

  
MARK W. ROGERS  
Deputy Director  
Torts Branch  
Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, DC 20044-0146

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

  
GEOFFREY EVANS, M.D.  
Director, Division of  
Vaccine Injury Compensation  
Healthcare Systems Bureau  
U.S. Department of Health  
and Human Services  
5600 Fishers Lane  
Parklawn Building, Mail 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, DC 20044-0146  
(202) 616-4098

Dated: June 20, 2012