

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

BRUCE and SUSAN WHITTENBURG,
as Co-Guardians of the Person of
SASON M'SUS WHITTENBURG, and
THAD WHITTENBURG, as
Conservator of the Estate of
SASON M'SUS WHITTENBURG,

Petitioners,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

No. 08-524V
Special Master Christian J. Moran

Filed: August 13, 2013

Entitlement, stipulation, Tdap vaccine,
hepatitis B vaccine, MMR vaccine,
Guillain-Barré syndrome

David Terzian, Rawls, McNelis & Mitchell, P.C., Richmond, VA, for Petitioner;
Debra A. Filteau Begley, U.S. Department of Justice, Washington, D.C., for Respondent.

UNPUBLISHED DECISION¹

On August 9, 2013, the parties filed a joint stipulation concerning the petition for compensation filed on July 18, 2008. In their petition, the petitioners alleged that the tetanus-diphtheria-acellular pertussis (“Tdap”), hepatitis B vaccine, and measles, mumps, rubella (MMR vaccine), which are contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a), and which Sason received on August 17, 2005, caused him to suffer Guillain-Barré Syndrome (“GBS”). Petitioners further alleges that Sason suffered the residual effects of this injury for more than six months. Petitioner represents that there has been no prior award or settlement of a civil action for damages on Sason’s behalf as a result of his condition.

Respondent denies that the Tdap, hepatitis B and/or MMR vaccines caused petitioner to suffer GBS or any other injury.

¹ 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.

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 lump sum payment of \$300,000.00 in the form of a check payable to Thad Whittenburg as conservator of the estate of Sason M'Sus Whittenburg. 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 08-524V according to this decision and the attached stipulation.²

Any questions may be directed to my law clerk, Tucker McCarthy, at (202) 357-6392.

IT IS SO ORDERED.

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

² 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

BRUCE and SUSAN WHITTENBURG, *
As Co-Guardians of the Person of *
SASON M'SUS WHITTENBURG, and *
THAD WHITTENBURG, as Conservator *
of the Estate of SASON M'SUS *
WHITTENBURG, *

Petitioner, *

v. *

SECRETARY OF HEALTH AND *
HUMAN SERVICES, *

Respondent. *

No. 08-524V
SPECIAL MASTER
CHRISTIAN J. MORAN

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of Sason M'Sus Whittenburg ("Sason"), Bruce and Susan Whittenburg and Thad Whittenburg ("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 Sason's receipt of tetanus-diphtheria-acellular pertussis ("Tdap"), Hepatitis B ("Hep. B"), and measles, mumps, rubella ("MMR") vaccines, which vaccines are contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Sason received Tdap, Hep. B, and MMR immunizations on August 17, 2005.
3. These vaccines were administered within the United States.
4. Petitioners allege that Sason developed GBS that was caused-in-fact by his Tdap, Hep. B, and MMR vaccinations. They further alleged that he suffers from severe cognitive and

psychological sequella as a result of his alleged injury. Finally, they alleged that Sason has experienced residual effects of these injuries 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 Sason as a result of his condition.

6. Respondent denies that Sason's GBS, any psychological or cognitive injuries, or the sequella of those conditions, or any other condition, was caused-in-fact by his Tdap, Hep. B, and/or MMR vaccinations. Respondent also denies that Sason has experienced the residual effects of his injuries 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 \$300,000.00 in the form of a check payable to Thad Whittenburg as conservator of the estate of Sason M'Sus Whittenburg. 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 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.

11. 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.

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 Sason 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. Petitioner Thad Whittenburg represents that he presently is, or within 90 days of the date of judgment will become, duly authorized to serve as conservator of Sason's estate under the laws of the State of Virginia. No payments pursuant to this Stipulation shall be made until petitioner Thad Whittenburg provides the Secretary with documentation establishing his appointment as conservator of Sason's estate. If petitioner Thad Whittenburg is not authorized by a court of competent jurisdiction to serve as conservator of the estate of Sason M'Sus Whittenburg 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 conservator of the estate of Sason M'Sus Whittenburg upon submission of written documentation of such appointment to the Secretary.

14. In return for the payments described in paragraphs 8 and 9, petitioners, in their individual capacity and as legal representatives of Sason, on behalf of themselves, Sason, 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 Sason resulting from, or alleged to have resulted from, the Tdap, Hep. B, and MMR vaccines administered on August 17, 2005, as alleged by petitioners in a petition for vaccine compensation filed on or about July 18, 2008, in the United States Court of Federal Claims as petition No. 08-524V.

15. If Sason 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.

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 Sason's GBS, any psychological or cognitive injuries, or the sequella of those conditions, or any other condition, was caused-in-fact by his Tdap, Hep. B, and/or MMR vaccinations.

19. All rights and obligations of petitioners hereunder shall apply equally to petitioners' heirs, executors, administrators, successors, and/or assigns as legal representatives of Sason M'Sus Whittenburg.

END OF STIPULATION

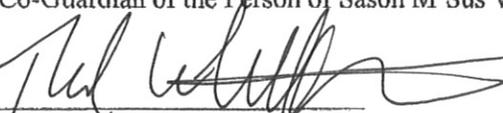
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Respectfully submitted,

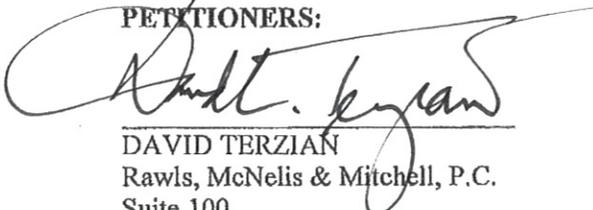
PETITIONERS:


SUSAN WHITTENBURG
Co-Guardian of the Person of Sason M'Sus Whittenburg


BRUCE WHITTENBURG
Co-Guardian of the Person of Sason M'Sus Whittenburg


THAD WHITTENBURG
Conservator of the Estate of Sason M'Sus Whittenburg

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Dated: 2/9/13