

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

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CHRISTINE BITENIEKS on behalf of \*  
DONOVAN BITENIEKS, a minor, \*

Petitioner, \*

No. 06-673V  
Special Master Christian J. Moran

v. \*

SECRETARY OF HEALTH \*  
AND HUMAN SERVICES, \*

Filed: February 27, 2008

Respondent. \*

\*\*\*\*\*

Daniel E. Wherry, Esq., Lincoln, Nebraska, for Petitioner;  
Melonie J. McCall, Esq., U.S. Department of Justice, Washington, D.C., for Respondent.

**DECISION<sup>1</sup>**

**MORAN:** Special Master.

On February 25, 2008, the parties filed a joint stipulation concerning the injuries received by Donovan Bitenieks. On September 26, 2006, Christine Bitenieks filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10, et. seq, on behalf of her son, Donovan. Her petition sought compensation for Donovan developing immune thrombocytopenic purpura (ITP) as a result of receiving the measles, mumps, rubella (MMR) vaccine on September 16, 2003.

Respondent admits that Donovan meets the criteria for a Table injury of ITP within 7-30 days of the MMR vaccine, however respondent denies that Donovan's injuries persisted for at least six months, as required by section 11(c)(1)(D)(I) of the Act. 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:

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<sup>1</sup> Petitioner is reminded that, pursuant to 42 U.S.C. § 300aa-12(d)(4) and Rule 18(b)(2) of the Vaccine Rules of this Court, within fourteen days of this decision, she may object to the public disclosure of any material including "medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy."

- (a) **A lump sum of \$15,000.00 in the form of a check payable to Petitioner, as guardian/conservator of Donovan's estate.** This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a); and
- (b) **A lump sum of \$21,977.50 in the form of a check payable to Petitioner and petitioner's attorney, Daniel E. Wherry,** for attorney's fees and costs; and
- (c) In compliance with General Order #9, a lump sum of \$250.00 to be paid to petitioner for out-of-pocket expenses incurred by petitioner in proceeding on the petition.

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 06-673V in accordance with this decision and the attached stipulation.

Any questions may be directed to Shana Z. Siesser, at (202) 357-6358.

**IT IS SO ORDERED.**

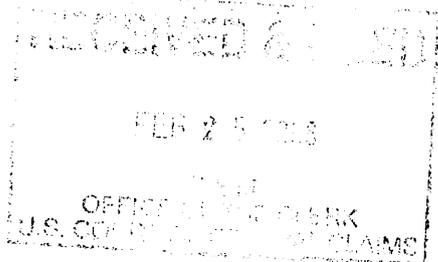
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Christian J. Moran  
Special Master

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IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS



CHRISTINE BITENIEKS, on behalf )  
of, DONOVAN BITENIEKS, a minor, )  
) Petitioner, )  
) v. )  
SECRETARY OF HEALTH AND HUMAN )  
SERVICES, )  
) Respondent. )

No. 06-673V  
Special Master Moran

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of her son, Donovan Bitenieks ("Donovan"), petitioner filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq. (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to Donovan's receipt of the combined measles, mumps, and rubella ("MMR") vaccine, which is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a)(V).
2. Donovan received his MMR vaccination on September 16, 2003.
3. The vaccine was administered in the United States.
4. Petitioner alleges that Donovan sustained a vaccine-related injury diagnosed as immune thrombocytopenic purpura ("ITP"), in accordance with the Table.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of Donovan as a result of his condition.

6. Respondent agrees that Donovan's alleged injury meets the criteria for a Table injury of ITP within 7-30 days of the MMR. However, respondent denies that Donovan's condition persisted for at least six months post vaccination, as required by section 11(c)(1)(D)(i) of the Act.

7. Maintaining their above-stated positions, the parties nevertheless agree 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 petitioner has 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 \$15,000.00 in the form of a check payable to petitioner, as guardian/conservator of Donovan's estate. This amount represents compensation for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which petitioner would be entitled; and,

b. A lump sum of \$21,977.50 in the form of a check payable to petitioner and petitioner's attorney, Daniel E. Wherry, for attorneys' fees and costs; and,

c. In compliance with General Order #9, a lump sum of \$250.00 to be paid to petitioner for out-of-pocket expenses incurred by petitioner in proceeding on the petition.

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

10. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and costs, the money provided pursuant to this Stipulation will be used solely for the benefit of Donovan 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).

11. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as guardian/conservator of Donovan's estate under the laws of the State of Nebraska. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as guardian/conservator of Donovan's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian/conservator of the estate of Donovan Bitenieks 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 Donovan Bitenieks upon submission of written documentation of such appointment to the Secretary.

12. In return for the payments described in paragraph 8, petitioner, in her individual capacity and as legal representative of Donovan, on behalf of herself, Donovan, and his heirs, executors, administrators, successors or assigns, does forever fully and expressly release, acquit and discharge the Secretary of Health and Human Services and the United States of America from any and all actions, causes of action, agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature on account of, or in any way growing out of, any and all known or unknown personal injuries to or death of Donovan resulting from, or alleged to have resulted from, the MMR vaccination administered on September 16, 2003, as alleged by petitioner in a petition for vaccine compensation filed on or about September 26, 2006, in the United States Court of Federal Claims as petition No. 06-673V.

13. If Donovan should die prior to receiving the payments described in paragraph 8, this agreement shall be considered voidable upon proper notice to the Court on behalf of either or both of the parties.

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 null and void at the sole discretion of either party.

15. This Stipulation expresses a full and complete settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended. 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.

16. All rights and obligations of petitioner hereunder shall apply equally to petitioner's successors and assigns as legal representatives of Donovan Bitenieks.

END OF STIPULATION