

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

JAMES and NELLA CARGIOLI COE,
as parents and legal representatives of
their minor daughter, ISABELLA COE,
Petitioner,

No. 06-645
Special Master Christian J. Moran

v.

Filed: June 10, 2008

SECRETARY OF HEALTH
AND HUMAN SERVICES,
Respondent.

Stipulation; Inactivated Polio
Vaccine; Combined Haemophilus
B Conjugate and Hepatitis B Vaccines;
Pneumococcal Conjugate Vaccine;
Varicella Virus Vaccine;
Encephalopathy.

UNPUBLISHED DECISION¹

David L. Terzian, Esq., Rawls & McNelis, Richmond, V.A., for Petitioner;
Michael P. Milmo, Esq., U.S. Department of Justice, Washington, D.C., for Respondent.

On June 2, 2008, the parties filed a joint stipulation concerning the claim made by James and Nella Cargioli Coe, as parents and legal representatives of their minor daughter, Isabella Coe. Petitioners filed for compensation on September 12, 2006. In the petition, the parents alleged that the inactivated polio vaccine, the combined haemophilus b conjugate and hepatitis b vaccines, the pneumococcal conjugate vaccine, and the varicella virus vaccine, which vaccines are contained in the Vaccine Injury Table, 42 C.F.R. §100.3, and which Isabella received on October 10, 2003, caused her to sustain an encephalopathy, a seizure disorder and significant behavioral problems.

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002).

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 clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, the person submitting the information has 14 days to identify and to move to delete such information before the document's disclosure. If the special master agrees that the identified material fits within the categories listed above, the special master shall redact such material from public access. 42 U.S.C. § 300aa-12(d)(4)(B); Vaccine Rule 18(b).

Respondent denies that Isabella suffered an encephalopathy, a seizure disorder and significant behavioral problems as a result of her vaccinations on October 10, 2003, and further denies that Isabella's current disabilities are sequela of any vaccine-related 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:

An amount of \$225,000.00 to purchase the annuity contract described in paragraph 10 of the joint stipulation (Appendix A), paid to the life insurance company from which the annuity will be purchased (the "Life Insurance Company"). The requirements for the annuity and eligibility of the Life Insurance Company are set forth in Appendix A. This amount represents compensation for all damages that would be available pursuant to 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 06-21V according to this decision and the attached stipulation.

Any questions may be directed to Francina Segbefia at (202) 357-6358.

IT IS SO ORDERED.

s/ Christian J. Moran

Christian J. Moran
Special Master

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

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JAMES AND NELLA CARGIOLI COE,)	
AS PARENTS AND LEGAL)	
REPRESENTATIVES OF THEIR MINOR)	
DAUGHTER, ISABELLA COE,)	
)	
Petitioners,)	No. 06-645V
)	Special Master
v.)	Christian J. Moran
)	
SECRETARY OF HEALTH AND HUMAN)	
SERVICES,)	
)	
Respondent.)	
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STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of their daughter, Isabella Coe ("Isabella"), 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 Isabella's receipt of multiple vaccines, which vaccines are contained in the Vaccine Injury Table (the "Table"), 42 U.S.C. § 300aa-14(a) (I); 42 C.F.R. § 100.3.

2. On October 10, 2003, Isabella received the following four immunizations: inactivated polio vaccine ("IPV"), combined haemophilus b conjugate and hepatitis B vaccines ("COMVAX"), pneumococcal conjugate vaccine ("PCV"), and varicella virus vaccine ("VARIVAX").

3. The vaccines were administered within the United States.

4. Petitioners allege that Isabella sustained an encephalopathy, a seizure disorder and significant behavioral problems as a result of the vaccinations she received on October 10, 2003.

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

6. Respondent denies that Isabella suffered an encephalopathy, a seizure disorder and significant behavioral problems as a result of her vaccinations on October 10, 2003, and denies that her current disabilities are sequelae of any vaccine-related 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 payment:

An amount of \$225,000.00 to purchase the annuity contract described in paragraph 10 below, paid to the life insurance company from which the annuity will be purchased (the "Life Insurance Company"). The amount

described herein represents compensation for all elements of compensation 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 contract from the Life Insurance Company for the benefit of Isabella Coe, pursuant to which the Life Insurance Company will agree to make payments periodically to petitioners for the following items of compensation:

For all elements of compensation under § 300aa-15(a), as soon as practicable after entry of judgment, the Secretary of Health and Human Services agrees to purchase an annuity contract at a cost of \$225,000.00 for the benefit of Isabella, pursuant to which the Life Insurance Company will agree to make installment payments periodically to Isabella as follows:

Beginning one month from the date of purchase, \$564.26 per month for 40 years certain, and for life thereafter, increasing at the rate of

3% compounded annually from the date payments begin.

The purchase price of the annuity described in this paragraph shall not exceed \$225,000.00. The monthly amount set forth above represents an estimate of the annuity stream that can be purchased for \$225,000.00. In the event that the cost of the annuity payments set forth above varies from \$225,000.00, the monthly payments set forth in this paragraph shall be adjusted to ensure that the total cost of the annuity is neither less nor greater than \$225,000.00. Petitioners will receive the annuity payments from the Life Insurance Company for the guaranteed period set forth above, and for Isabella's life thereafter. Should Isabella Coe predecease the exhaustion of the certain payments during the 40 year certain period, any remaining payments shall be made to her estate. If Isabella Coe is alive at the end of the 40 year certain period, petitioners will continue to receive the annuity payments from the Life Insurance Company only so long as Isabella is alive at the time that a particular payment is due. Petitioners shall provide written notice to the Secretary of Health and Human Services and to the Life Insurance Company within twenty (20) days of Isabella Coe'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 amount set forth in paragraph 8 herein and the amount 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. 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.

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

15. Petitioners represent that they presently are, or within 90 days of the date of judgment will become, duly authorized to serve as guardian(s)/conservator(s) of Isabella's estate under the laws of Oregon. No payments pursuant to this Stipulation shall be made to petitioners until petitioners provide the Secretary with documentation establishing their appointment as guardian(s)/conservator(s) of Isabella's estate. If petitioners are not authorized by a court of competent jurisdiction to serve as guardian(s)/conservator(s) of the estate of Isabella 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(s)/conservator(s) of the estate of Isabella Coe upon submission of written documentation of such appointment to the Secretary.

16. In return for the payments described in paragraphs 8 and 12, petitioners, in their individual capacities and as legal representatives of Isabella, on behalf of themselves, Isabella, and her heirs, executors, administrators, successors or assigns, do forever and fully 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 Isabella resulting from, or alleged to have resulted from, the IPV, COMVAX, PCV and VARIVAX vaccines administered on October 10, 2003, as alleged by petitioners in a petition for vaccine compensation filed on or about September 12, 2006, in the United States Court of Federal Claims as petition No. 06-645V.

17. 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.

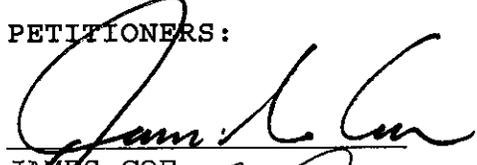
18. This Stipulation expresses a full and complete settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 12 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to.

19. All rights and obligations of petitioners hereunder shall apply equally to their successors and assigns as legal representatives of Isabella Coe.

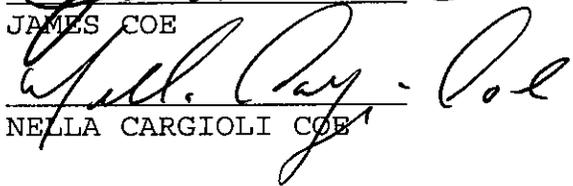
END OF STIPULATION

Respectfully submitted,

PETITIONERS:

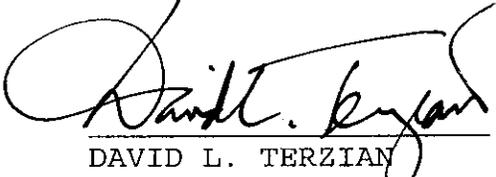


JAMES COE



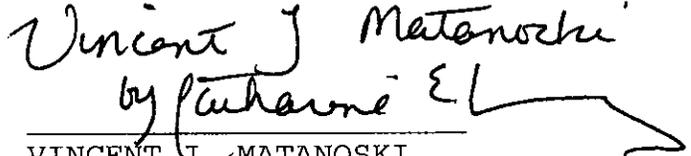
NELLA CARGIOLI COE

ATTORNEY OF RECORD FOR
PETITIONERS:



DAVID L. TERZIAN
RAWLS & MCNELIS
Suite 1701
1111 East Main Street
Richmond, Virginia 23219
(804) 782-0133

AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:



VINCENT J. MATANOSKI
Acting Deputy Director
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 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, Room 11C-26
Rockville, MD 20857

ATTORNEY OF RECORD FOR
RESPONDENT:



MICHAEL P. MILMOE
Senior Trial Counsel
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
(202) 616-4125

Dated: May 23, 2008