

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

(Filed: May 22, 2006)

DO NOT PUBLISH

CHARLOTTE KEMPER,)	
mother and natural guardian of her son,)	
SULLIVAN KEMPER,)	
)	
Petitioner,)	
)	
v.)	No. 02-1489V
)	Stipulation
SECRETARY OF)	
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

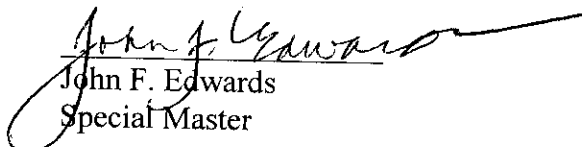
DECISION DIRECTING ENTRY OF JUDGMENT¹

On May 18, 2006, the parties filed a stipulation. The special master has reviewed thoroughly the stipulation. He adopts completely the stipulation. Therefore, in the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment based upon the stipulation in petitioner's favor.²

¹ As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire decision" will be available to the public. *Id.*

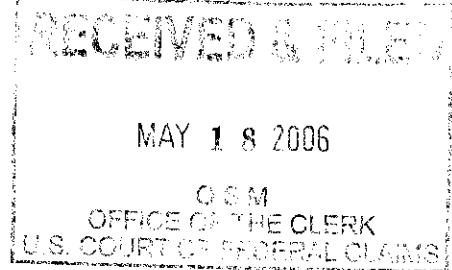
² Under Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review. Then, under Vaccine Rule 12(a), petitioner may expedite payment by filing an election to accept the judgment.

The clerk of court shall send petitioner's copy of this decision to petitioner by overnight express delivery.


John F. Edwards
Special Master

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS



SULLIVAN KEMPER, a minor, by his)
mother and natural guardian,)
CHARLOTTE KEMPER,)
)
Petitioner,)
)
v.)
)
SECRETARY OF HEALTH AND HUMAN)
SERVICES,)
)
Respondent.)
_____)

No. 02-1489V

Special Master Edwards

STIPULATION

It is hereby stipulated by and between the parties, the following matters:

1. Charlotte Kemper, petitioner, filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34, as amended (the "Vaccine Program"), on behalf of her minor son, Sullivan Kemper ("Sullivan"). The petition seeks compensation for injuries allegedly related to Sullivan's receipt of diphtheria-tetanus-acellular pertussis vaccine ("DTaP"), Haemophilus influenzae type B vaccine ("HiB"), and inactivated polio vaccine ("IPV"), all of which are covered under the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a), as amended.
2. Sullivan received the above vaccines on January 12, 2001.
3. The vaccines were administered within the United States.
4. Petitioner alleges that Sullivan sustained an encephalopathy and left hemiplegia as a result of receiving the above vaccinations.
5. Petitioner represents that there has been no prior award or settlement of a civil

action for damages on Sullivan's behalf as a result of his alleged vaccine-related injury.

6. Respondent denies that petitioner has established by a preponderance of evidence that Sullivan suffered an acute encephalopathy, as that term is defined by the Vaccine Injury Table, or that his injuries were in fact caused by any of the vaccines administered to him on January 12, 2001.

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 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 Fifty-Nine Thousand Dollars (\$59,000.00) in the form of a check payable to petitioner. This amount represents compensation for past unreimbursed medical expenses for Sullivan; and
- b. A lump sum payment of One Hundred Twenty-One Thousand Dollars (\$121,000.00) in the form of a check payable to petitioner on behalf of Sullivan. This amount represents compensation for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which Sullivan would be entitled. Such compensation includes, but is not limited to, compensation for past and future pain and suffering, therapies, orthopedic doctor visits, orthotics, surgeries, and therapy toys and equipment.

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the special master shall preside over further proceedings to award reasonable attorneys' fees and costs incurred in proceedings upon this

petition.

10. Payment 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. The parties and their attorneys further agree and stipulate that the money provided in paragraph 8(b) of this Stipulation will be used solely for the benefit of Sullivan, 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).

12. Petitioner represents that she is, or within 90 days of the date of judgment will become, duly authorized to serve as a guardian/conservator of Sullivan's estate under the laws of the State of Florida. No payments pursuant to paragraph 8(b) of this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as guardian/conservator of Sullivan's estate.

13. In return for the payments described in paragraph 8, and any payment awarded pursuant to paragraph 9, petitioner in her individual capacity, and as the legal representative of Sullivan, on behalf of herself, Sullivan, his heirs, executors, administrators, successors, and assigns, does 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 Sullivan resulting from, or alleged to have resulted from, the DTaP, HiB, and IPV vaccinations administered to Sullivan on January 12, 2001, as alleged by

petitioner in a petition for vaccine compensation filed on or about November 1, 2002, and in an amended petition filed on or about May 28, 2004, in the United States Court of Federal Claims as petition No. 02-1489V.

14. In the event the special master fails to issue a decision in complete conformity with the terms of this Stipulation or in the event 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 her heirs, successors and/or assigns as the legal representative of Sullivan Kemper.


END OF STIPULATION

Respectfully submitted,

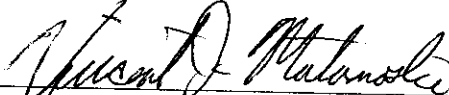
PETITIONER:


CHARLOTTE KEMPER


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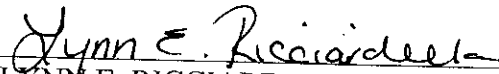
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Date: May 18, 2006