

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

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U.S. COURT OF
FEDERAL CLAIMS

NANCEY COST, parent and legal
representative of a minor child,
JASON COST

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

No. 07-234V

Special Master Christian J. Moran

Filed: April 16, 2008

Stipulation; MMR vaccine;
idiopathic thrombocytopenic
purpura.

UNPUBLISHED DECISION¹

Peter J. Sarda, Esq., Wallace, Nordon, and Sarda, LLP, Raleigh, N.C., for Petitioner;
Melonie J. McCall, Esq., U.S. Department of Justice, Washington, D.C., for Respondent.

On April 3, 2008, the parties filed a joint stipulation concerning the claim made in the petition filed by Nancey Cost, parent and legal representative of her minor child, Jason Cost, on April 11, 2007. In her petition, Ms. Cost alleged that the measles-mumps-rubella ("MMR") vaccine, which Jason received on March 18, 2004, caused him to develop idiopathic thrombocytopenic purpura ("ITP"). Ms. Cost sought compensation for those injuries.

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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).

Vaccine Rule 18(b) states that 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, petitioner has 14 days to identify and to move to delete such information before the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access.

Respondent agrees that Jason's alleged injury meets the criteria for a Table injury of ITP within 7-30 days of the MMR. Respondent denies, however, that Jason's condition persisted for at least six months post vaccination, as required by section 11(c)(1)(D)(I) of the Act. Resp't Rep't, filed July 24, 2007. 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.

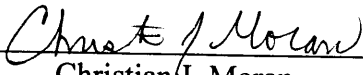
Damages awarded in that stipulation include:

A lump sum of \$15,000.00 in the form of a check payable to Petitioner. 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 07-234V according to this decision and the attached stipulation.

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

IT IS SO ORDERED.



Christian J. Moran
Special Master

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

NANCEY COST, as parent and
guardian ad litem of minor
child, JASON COST,

Petitioner,

v.

SECRETARY OF HEALTH AND HUMAN
SERVICES,

Respondent.

No. 07-234V

Special Master Moran

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of her son, Jason Cost ("Jason"), 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 Jason'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. Jason received his MMR vaccination on March 18, 2004.
3. The vaccine was administered within the United States.
4. Petitioner alleges that Jason sustained the first symptom or manifestation of the onset of idiopathic thrombocytopenic purpura ("ITP") within the time period set forth in the Table.

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

6. Respondent agrees that Jason's alleged injury meets the criteria for a Table injury of ITP within 7-30 days of the MMR. Respondent denies that Jason'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 payment:

A lump sum of \$15,000.00 in the form of a check payable to petitioner. 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 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 parties will submit to further proceedings before the special master to award

reasonable attorneys' fees and costs incurred in proceeding 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, except for any award for attorneys' fees and costs, the money provided pursuant to this Stipulation will be used solely for the benefit of Jason 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 presently is, or within 90 days of the date of judgment will become, duly authorized to serve as guardian/conservator of Jason's estate under the laws of the State of North Carolina. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as guardian/conservator of Jason's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian/conservator of the estate of Jason Cost 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 Jason Cost upon submission of written documentation of such appointment to the Secretary.

13. In return for the payment described in paragraphs 8 and 9, petitioner, in her individual capacity and as legal representative of Jason, on behalf of herself, Jason, 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 Jason resulting from, or alleged to have resulted from, the MMR vaccination administered on March 18, 2004, as alleged by petitioner in a petition for vaccine compensation filed on or about April 11, 2007, in the United States Court of Federal Claims as petition No. 07-234V.

14. If Jason should die prior to receiving the payment 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.

15. 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.

16. 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 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.

17. All rights and obligations of petitioner hereunder shall apply equally to petitioner's successors and assigns as legal representatives of Jason Cost.

END OF STIPULATION

Respectfully submitted,

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Nancey Cost
NANCEY COST

ATTORNEY OF RECORD FOR
PETITIONER:

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Dated: 4/3/08

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