

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

PATRICIA WILLIAMS and
JOSEPH B. DIFIGLIA, Legal
Representatives of the Estate of
GIANA J. DIFIGLIA,
Petitioners,
v.
SECRETARY OF HEALTH
AND HUMAN SERVICES,
Respondent.

No. 07-302V
Special Master Christian J. Moran
Filed: May 20, 2008
Stipulation; diphtheria-tetanus-
acellular pertussis; haemophilus
influenzae type b; inactivated polio
vaccine; pneumococcal; death.

UNPUBLISHED DECISION

Carol L. Gallagher, Esq., Gallagher & Gallagher, Somers Point, N.J., for Petitioner;
Julia W. McInerney, Esq., U.S. Department of Justice, Washington, D.C., for Respondent.

On May 15, 2008, the parties filed a joint stipulation concerning the petition for compensation filed by Patricia Williams and Joseph B. DiFiglia, on behalf of their daughter, Giana J. DiFiglia ("Giana") on May 14, 2007. Petitioners alleged that the diphtheria-tetanus-acellular pertussis, haemophilus influenzae type b, inactivated polio vaccine, and pneumococcal, which vaccines are contained in the Vaccine Injury Table, 42 C.F.R. §100.3(a), and which Giana received on March 7, 2006, caused Giana to suffer the onset of a vaccine-induced encephalopathy

1 Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of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

within hours of her vaccinations and that Giana's death was a sequela of the vaccine-related injury.

Respondent denies that Giana suffered the onset of a vaccine-induced encephalopathy within hours of her vaccinations, and denies that her death was a sequela of a 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:

A lump sum payment of \$175,000.00 in the form of a check payable to petitioners, as Legal Representatives of the Estate of Giana J. DiFiglia. This amount represents compensation for all elements of compensation 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 07-302V 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

PATRICIA WILLIAMS and JOSEPH B.
DIFIGLIA, Legal Representatives of the Estate
of GIANA J. DIFIGLIA, deceased,

Petitioners,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

No. 07-302V
Special Master Christian J. Moran

STIPULATION

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

1. On behalf of their daughter, Giana J. DiFiglia "Giana"), petitioners 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 Giana's receipt of the diphtheria-tetanus-acellular pertussis ("DTaP"), haemophilus influenzae type b ("Hib"), inactivated polio vaccine ("IPV"), and pneumococcal ("Pprevnar"), which vaccines are contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).

2. Giana received her vaccinations on March 7, 2006.

3. The vaccinations were administered within the United States.

4. Petitioners allege that Giana sustained the first symptom or manifestation of the onset of a vaccine-induced encephalopathy within hours of her March 7, 2006, vaccinations. Giana died on March 9, 2006. Petitioners further allege that Giana's death was a sequela of her

encephalopathy.

5. Petitioners represent that there has been no prior award or settlement of a civil action for damages on behalf of Giana as a result of her alleged vaccine-related injury and death.

6. Respondent denies that Giana suffered the onset of a vaccine-induced encephalopathy within hours of her vaccinations, and denies that her death was a sequela of a 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:

A lump sum of \$175,000.00 in the form of a check payable to petitioners, as Legal Representatives of the Estate of Giana J. DiFiglia. This amount represents compensation for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which petitioners would be entitled.

9. Payment made pursuant to paragraph 8 of this Stipulation and any amount awarded pursuant to paragraph 10 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. 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 special master shall preside over further

proceedings to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

11. Petitioners represent that they are duly authorized to serve as administrators of Giana's estate under the laws of the state of New Jersey.

12. In return for the payments described in paragraphs 8 and 10, petitioners, in their individual capacities and as legal representatives of Giana, on behalf of themselves, and Giana's 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, resulting from, or alleged to have resulted from, the administration of the DTaP, Hib, IPV, and Prevnar vaccinations administered on March 7, 2006, as alleged by petitioners in a petition for vaccine compensation filed on or about May 14, 2007, in the United States Court of Federal Claims as petition No. 07-302V.

13. 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.

14. 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 10 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.

15. All rights and obligations of petitioners hereunder shall apply equally to their successors and assigns.

END OF STIPULATION

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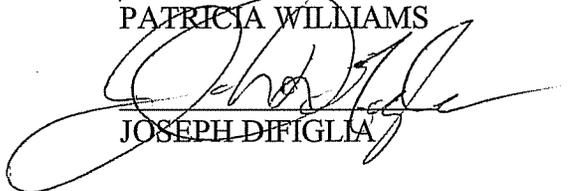
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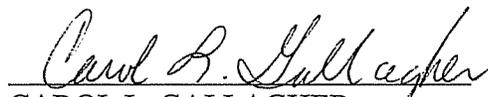
Respectfully submitted,

PETITIONERS:

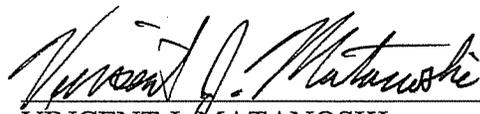

PATRICIA WILLIAMS


JOSEPH DIFIGLIA

**ATTORNEY OF RECORD FOR
PETITIONERS:**


CAROL L. GALLAGHER
GALLAGHER & GALLAGHER
822 Shore Road
Somers Point, NJ 08244
(609) 926-6450

**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, DC 20044-0146

**AUTHORIZED REPRESENTATIVE OF
THE SECRETARY OF HEALTH AND
HUMAN SERVICES:**


GEOFFREY EVANS, M.D.
Acting Director, Division of
Vaccine Injury Compensation
Healthcare Systems Bureau
U.S. Department of Health
and Human Services
5600 Fishers Lane
Parklawn Building, Stop 11C-26
Rockville, MD 20857

**ATTORNEY OF RECORD FOR
RESPONDENT:**


JULIA W. MCINERNEY
Trial Attorney
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
(202) 353-3919

Dated: 5/15/08