

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 11-579V

Filed: September 17, 2015

Not for Publication

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MARISSA SCHWARTZ,

Petitioner,

v.

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

Respondent.

\*\*\*\*\*

Anne C. Toale, Sarasota, FL for petitioner.

Ann D. Martin, Washington, DC, for respondent.

Damages decision based on  
stipulation; human papillomavirus  
("HPV") vaccine; juvenile  
rheumatoid arthritis ("JRA");  
undifferentiated connective tissue  
disease ("UCTD"); mixed  
connective tissue disease ("MCTD")

**MILLMAN, Special Master**

### **DECISION AWARDING DAMAGES<sup>1</sup>**

On September 16, 2015, the parties filed the attached stipulation in which they agreed to

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub.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 constitute a clearly unwarranted invasion of privacy. When such a decision is filed, petitioner has 14 days to identify and move to delete such information prior to 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.

settle this case and described the settlement terms. Petitioner received tetanus-diphtheria acellular pertussis (“Tdap”), meningococcal, and human-papillomavirus (“HPV”) vaccines on September 13, 2008. She also received an HPV vaccine on December 18, 2008. Petitioner alleges that her HPV vaccine(s) caused her to suffer juvenile rheumatoid arthritis (“JRA”), undifferentiated connective tissue disease (“UCTD”), and/or mixed connective tissue disease (“MCTD”). Petitioner further alleges that she experienced the residual effects of these injuries for more than six months. Respondent denies that petitioner’s HPV vaccine(s), or any other vaccines, caused her to suffer JRA, UCTD, MCTD, and/or any other injury. Nonetheless, the parties agreed to resolve this matter informally.

The undersigned finds the terms of the stipulation to be reasonable. The court hereby adopts the parties’ said stipulation, attached hereto, and awards compensation in the amount and on the terms set forth therein. Pursuant to the stipulation, the court awards:

- a. a lump sum of **\$75,000.00** in the form of a check payable to petitioner representing compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a);
- b. a lump sum of **\$1,000.00** in the form of a check payable jointly to petitioner and Alan and Kathleen Schwartz, representing compensation for damages that would be available under 42 U.S.C. § 300aa-15(a)(1)(B); and
- c. A lump sum of **\$1,017.91**, representing full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of California may have against any individual as a result of any Medicaid payments the State of California has made to or on behalf of petitioner from the date of her eligibility for benefits through the date of judgment in this case as a result of her alleged vaccine-related injury suffered on or about December 21, 2008, under Title XIX of the Social Security Act, available under 42 U.S.C. § 300aa-15(g). This payment shall be made in the form of a check payable jointly to petitioner and

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Sacramento, CA 95899-7421

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.<sup>2</sup>

**IT IS SO ORDERED.**

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<sup>2</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party, either separately or jointly, filing a notice renouncing the right to seek review.

Dated: September 17, 2015

s/ Laura D. Millman  
Laura D. Millman  
Special Master

MARISSA SCHWARTZ,	)	
	)	
Petitioners,	)	
	)	
v.	)	No. 11-579V
	)	Special Master Millman
	)	ECF
SECRETARY OF HEALTH AND	)	
HUMAN SERVICES,	)	
	)	
Respondent.	)	
	)	

The parties hereby stipulate to the following matters:

2. Petitioner received tetanus-diphtheria-acellular pertussis (“Tdap”), meningococcal, and HPV vaccines on September 13, 2008. She received an HPV vaccine on December 18, 2008.

4. Petitioner alleges that her HPV vaccine(s) caused her to suffer juvenile rheumatoid arthritis (“JRA”), undifferentiated connective tissue disease (“UCTD”) and/or mixed connective tissue disease (“MCTD”). Petitioner further alleges that she experienced the residual effects of her vaccine-related injury for more than six months.

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

6. Respondent denies that petitioner's HPV vaccine(s), or any other vaccines, caused her to suffer JRA, UCTD, MCTD, and/or any other injury. Respondent also denies that any vaccines caused petitioner to suffer a significant aggravation of a pre-existing 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 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 payments:

- a. A lump sum of \$75,000.00 in the form of a check payable to petitioner representing compensation for all damages that would be available under 42 U.S.C §§ 300aa-15(a), except for damages available under 42 U.S.C § 300aa-15(a)(1)(B), which are addressed in paragraph 8.b of this Stipulation;
- b. A lump sum of \$1,000.00, which amount represents compensation for past unreimbursable medical expenses, available under 42 U.S.C. § 300aa-15(a)(1)(B), in the form of a check payable jointly to petitioner and Alan and Kathleen Schwartz;<sup>1</sup> and
- c. A lump sum of \$1,017.91, which amount represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of California may have against any individual as a result of any Medicaid payments the State of California has made to or on behalf of petitioner from the date of her eligibility for benefits through the date of judgment in this case as a result of her alleged vaccine-related injury suffered on or about December 21, 2008, under Title XIX of the Social Security Act, available under 42 U.S.C. § 300aa-15(g), in the form of a check payable jointly to petitioner and

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<sup>1</sup> Alan and Kathleen Schwartz, petitioner's parents, initially filed this petition on petitioner's behalf because petitioner was a minor. Petitioner subsequently reached the age of majority.

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Petitioner agrees to endorse this payment to the State of California.

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. Petitioner and her attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or by entities that provide health services on a pre-paid basis.

11. Payment made pursuant to paragraph 8 of this Stipulation 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.

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



13. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity, and on behalf of her heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of petitioner resulting from, or alleged to have resulted from, the Tdap, meningococcal and/or HPV vaccines administered on September 13, 2008, and/or the HPV vaccine administered on December 18, 2008, as alleged by petitioner in a petition for vaccine compensation filed on or about September 9, 2011, in the United States Court of Federal Claims as petition No. 11-579V.

14. If petitioner should die prior to entry of judgment, this agreement shall be 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 voidable at the sole discretion of either party.

16. This Stipulation expresses a full and complete negotiated 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. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

17. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the Tdap, meningococcal, HPV, and/or any other vaccines caused petitioner to suffer JRA, UCTD, MCTD, and/or any other injury; or that petitioner's vaccines caused her to suffer a significant aggravation of a preexisting condition.

18. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

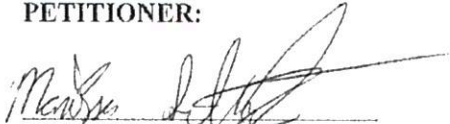
## END OF STIPULATION

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Respectfully submitted,

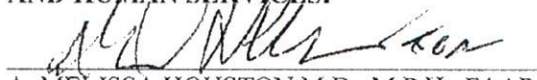
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MARISSA SCHWARTZ

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Dated: 9-16-15

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