

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 16-410V

Filed: June 7, 2018

UNPUBLISHED

CHRISTINA MAJESTY and SETH
FRUGE, legal representatives of a
minor child, R.F.,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU); Joint
Stipulation on Damages; Rotavirus
Vaccine; Intussusception

Jeremy Zivko Soso, Lambert Firm, PLC, New Orleans, LA, for petitioner.

Adriana Ruth Teitel, U.S. Department of Justice, Washington, DC, for respondent.

DECISION ON JOINT STIPULATION¹

Dorsey, Chief Special Master:

On March 31, 2016, petitioners filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the “Vaccine Act”). Petitioners allege that R.F. suffered from intussusception as a result of receiving a rotavirus vaccine. Petition at 1; Stipulation, filed June 7, 2018, at ¶ 4. Petitioner further alleges that there has been no prior award or settlement of a civil action for damages as a result of R.F.’s injury. Petition at 3; Stipulation at ¶¶ 5. “Respondent denies that the rotavirus vaccine caused R.F. to suffer intussusception or any other injury or his current condition.” Stipulation at ¶ 6.

Nevertheless, on June 7, 2018, the parties filed the attached joint stipulation, stating that a decision should be entered awarding compensation. The undersigned

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

finds the stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

Pursuant to the terms stated in the attached Stipulation, **the undersigned awards** the following compensation:

- **A lump sum payment of \$2,131.08, representing compensation for full satisfaction of the State of Louisiana Medicaid lien, in the form of a check payable jointly to petitioners and:**

**The Rawlings Company LLC
Attn: John Linn
The Rawlings Company, Subrogation Division
P.O. Box 2000
LaGrange, KY 40031-200
File No: 18LSM0300647**

Petitioners agree to endorse this payment to The Rawlings Company LLC; and

- **A lump sum of \$27,868.92 in the form of a check payable to petitioners as guardians/conservators of R.F.'s estate.** Stipulation at ¶ 8. This amount represents compensation for all remaining items of damages that would be available under 42 U.S.C. § 300aa-15(a). *Id.*

The undersigned approves the requested amount for petitioner's compensation. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

CHRISTINA MAJESTY and SETH FRUGE,
legal representatives of a minor child, R.F.,

Petitioners,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 16-410V
Chief Special Master Dorsey
ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. As legal representatives of R.F., Christina Majesty and Seth Fruge ("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 R.F.'s receipt of a rotavirus vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. R.F. received his second rotavirus vaccination on July 18, 2015.
3. The vaccine was administered within the United States.
4. Petitioners allege that R.F. suffered from intussusception as a result of receiving the rotavirus vaccine.
5. Petitioners represent that there has been no prior award or settlement of a civil action for damages as a result of R.F.'s injury.
6. Respondent denies that the rotavirus vaccine caused R.F. to suffer intussusception or any other injury or his current condition.

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 payments:

- a. a lump sum payment of **\$2,131.08**, representing compensation for full satisfaction of the State of Louisiana Medicaid lien, in the form of a check payable jointly to petitioners and:

The Rawlings Company LLC
Attn: John Linn
The Rawlings Company, Subrogation Division
P.O. Box 2000
LaGrange, KY 40031-200
File No: 18LSM0300647

Petitioners agree to endorse this payment to The Rawlings Company LLC; and

- b. a lump sum of **\$27,868.92** in the form of a check payable to petitioners as guardians/conservators of R.F.'s estate. This amount represents compensation for all remaining 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 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.

10. Petitioners and their attorney represent that they have identified to respondent all known sources of payment for items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), including 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 entities that provide health services on a pre-paid basis.

11. 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.

12. 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 will be used solely for the benefit of R.F. 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. Petitioners represent that they presently are or within 90 days of the date of judgment will become, duly authorized to serve as guardians/conservators of R.F.'s estate under the laws of the State of Louisiana. No payments pursuant to this Stipulation shall be made until petitioners provide the Secretary with documentation establishing their appointment as guardians/conservators of R.F.'s estate. If petitioners are not authorized by a court of competent jurisdiction to serve as guardians/conservators of the estate of R.F. 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 R.F. upon submission of written documentation of such appointment to the Secretary.

14. In return for the payments described in paragraphs 8 and 9, petitioners, in their individual capacity and as legal representatives of R.F., on behalf of themselves, R.F., and his heirs, executors, administrators, successors or assigns, do 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 R.F. resulting from, or alleged to have resulted from, the rotavirus vaccination administered on July 18, 2015, as alleged by petitioners in the petition for vaccine compensation filed on March 31, 2016, in the United States Court of Federal Claims as petition No. 16-410V.

15. If R.F. 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.

16. 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.

17. 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.

18. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the rotavirus vaccine caused R.F. to suffer intussusception or any other injury or his current condition.

19. All rights and obligations of petitioners hereunder shall apply equally to petitioners' heirs, executors, administrators, successors, and/or assigns as legal representatives of R.F.

END OF STIPULATION

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Respectfully submitted,

PETITIONERS:



CHRISTINA MAJESTY


SETH FRUGE

**ATTORNEY OF RECORD FOR
PETITIONERS:**


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Dated: 6/7/2018