

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 07-785V
(Not to be published)

DANIEL THRASHER and KIMBERLY THRASHER
Surviving parents and legal representatives of
a minor child COURTNEY THRASHER, deceased

Petitioners,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES

Respondent.

Filed: January 24, 2014

Decision by Stipulation;
Damages; Influenza (Flu)
Vaccine; Death

Ramon Rodriguez, III, Fort Worth, TX, for Petitioner

Glenn A. MacLeod, Washington, DC, for Respondent

DECISION AWARDING DAMAGES¹

On November 8, 2007, petitioners Daniel Thrasher and Kimberly Thrasher, as parents and legal representatives of the vaccinee Courtney Thrasher, deceased, filed a petition seeking compensation under the National Vaccine Injury Compensation Program, (“the Vaccine Program”).² Petitioners alleged that the vaccinee suffered an injury resulting from an influenza

¹ Because this decision contains a reasoned explanation for my action in this case, I will post this decision on the United States Court of Federal Claims’ website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). 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 a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or 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 The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended,

(“flu”) vaccination she received on November 3, 2005, and that the injury eventually caused the vaccinee’s death.

Respondent denies that the vaccinee’s alleged injuries and eventual death were caused by her receipt of the flu vaccine. Nonetheless, both parties, while maintaining the above positions, agreed in a stipulation filed January 24, 2014 that the issues before them can be settled and that a decision should be entered awarding petitioners compensation.

I have reviewed the file and, based upon that review, I conclude that the parties’ stipulation is reasonable. I therefore adopt the stipulation as the decision of this proceeding in awarding damages, on the terms set forth therein.

The stipulation awards:

- a) A lump sum of \$2,937.75, which amount represents reimbursement of a lien for services rendered on behalf of Courtney Thrasher, in the form of a check payable jointly to petitioners as Legal Representatives of the Estate of Courtney Thrasher, deceased, and

Alabama Medicaid Agency
HMS
Attention: AL Medicaid Subrogation Unit
P.O. Box 166709
Irving, TX 75016-6709

petitioners agree to endorse this payment to the Alabama Medicaid Agency;
and

- b) A lump sum of \$100,000.00, in the form of a check payable to petitioners, as Legal Representative of the Estate of Courtney Thrasher, deceased, which amount represents compensation for all other damages that would be available under 42 U.S.C. § 300aa-15(a);

Stipulation ¶ 8.

I approve a Vaccine Program award to be made to petitioners in the amounts set forth above. 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.³

42 U.S.C.A. § 300aa-10-§ 300aa-34 (West 1991 & Supp. 2002) (“Vaccine Act”). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

³ Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing their right to seek review.

IT IS SO ORDERED.

/s/ Brian H. Corcoran
Brian H. Corcoran
Special Master

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

DANIEL and KIMBERLY THRASHER,
Surviving Parents and Legal Representatives
of a Minor Child, **COURTNEY THRASHER,**
Deceased,

Petitioners,

v.

**SECRETARY OF HEALTH
AND HUMAN SERVICES,**

Respondent.

*
*
*
*
*
*
*
*
*
*
*
*
*
*
*
*
*
*
*
*
*

No. 07-785V (ECF)
SPECIAL MASTER
BRIAN CORCORAN

STIPULATION

The parties hereby stipulate to the following matters:

1. Petitioners, Daniel Thrasher and Kimberly Thrasher, as parents of Courtney Thrasher (“Courtney”), deceased, 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 Courtney’s receipt of the trivalent influenza (“flu”) vaccine, which vaccine is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3 (a).
2. Courtney received a flu vaccination on or about November 3, 2005.
3. The vaccine was administered within the United States.
4. Petitioners claim that Courtney’s death on November 8, 2005, resulted from an injury caused by the flu immunization she received on or about November 3, 2005.

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

6. Respondent denies that the flu vaccine caused Courtney's injury or her death, and further denies that Courtney's death on November 8, 2005, was a sequelae 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 payments:

a. A lump sum of \$2,937.75, which amount represents reimbursement of a lien for services rendered on behalf of Courtney Thrasher, in the form of a check payable jointly to petitioners as Legal Representatives of the Estate of Courtney Thrasher, deceased, and

Alabama Medicaid Agency
HMS
Attention: AL Medicaid Subrogation Unit
P.O. Box 166709
Irving, TX 75016-6709

Petitioners agree to endorse this payment to the Alabama Medicaid Agency; and

b. A lump sum of \$100,000.00, in the form of a check payable to petitioners, as Legal Representatives of the Estate of Courtney Thrasher, deceased, which amount represents compensation for all other 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 prepaid basis.

11. Payment made pursuant to paragraph 8 of this Stipulation and any amounts awarded pursuant to paragraph 9 will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. Petitioners represent that they presently are, or within 90 days of the date of judgment will become, duly authorized to serve as Legal Representatives or conservators of Courtney Thrasher's estate under the laws of the State of Alabama.

13. In return for the payments described in paragraphs 8 and 9, petitioners, in their individual capacities and as Legal Representatives of the Estate of Courtney Thrasher, deceased, and on behalf of Courtney's heirs, executors, administrators, successors, and 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 United States 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 Courtney Thrasher resulting from, or alleged to have resulted from, the flu vaccination administered on or about

November 3, 2005, as alleged by petitioners in a petition for vaccine compensation filed on or about November 8, 2007, in the United States Court of Federal Claims as petition No. 07-785V.

14. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the United States 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.

15. 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 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.

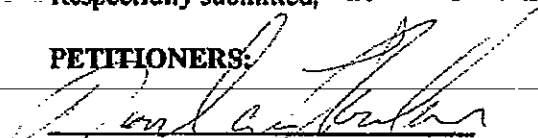
16. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the flu vaccination caused Courtney any illness or her death.

17. All rights and obligations of petitioners hereunder shall apply equally to petitioners' heirs, executors, administrators, successors, and/or assigns, as Legal Representative of the Estate of Courtney Thrasher.

END OF STIPULATION

Respectfully submitted,

PETITIONERS:




DANIEL THRASHER




KIMBERLY THRASHER

**ATTORNEY OF RECORD FOR
PETITIONERS:**




RAMON RODRIGUEZ, III, M.D., ESQ.
Rawls, McNells & Mitchell, P.C.
211 Rocketts Way
Suite 100
Richmond, Virginia 23231
Tel: (804) 782-0608

**AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:**



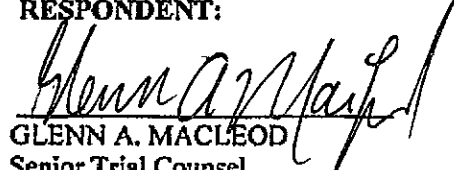
VINCENT J. MATANOSKI
Deputy Director
Torts Branch
Civil Division
U. S. Department of Justice
P. O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146

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



VITO CASERTA, M.D., M.P.H.
Acting Director, Division of
Vaccine Injury Compensation (DVIC)
Director, Countermeasures Injury
Compensation Program (CICP)
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:**



GLENN A. MACLEOD
Senior Trial Counsel
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
Tel: (202) 616-4122

Dated: 1/24/14