

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 11-457V

Filed: March 7, 2016

* * * * *

ASHLEY COPPERTHITE as Next Friend and*
 Mother of ASIA COPPERTHITE, deceased, *
 *
 Petitioner, *
 *
 v. *
 *
 SECRETARY OF HEALTH *
 AND HUMAN SERVICES, *
 *
 Respondent. *
 *

* * * * *

UNPUBLISHED

Special Master Gowen

Joint Stipulation on Damages;
 Pediarix, Hemophilus influenza type
 B; Prevnar; Death.

Elaine W. Sharp, Whitfield, Sharp & Sharp, Marblehead, MA, for petitioner.
Claudia B. Gangi, United States Department of Justice, Washington, DC, for respondent.

DECISION ON JOINT STIPULATION¹

On July 11, 2011, Ashley Copperthite (“petitioner”) filed a petition pursuant to the National Vaccine Injury Compensation Program. 42 U.S.C. §§ 300aa-1 to -34 (2012). Petitioner alleged that as a result of receiving Pediarix, Hemophilus influenza type B, and Prevnar vaccinations on January 2, 2008, her daughter, Asia Copperthite, suffered a seizure disorder and death. Stipulation for Award at ¶ 1, 4.

On February 1, 2016, the parties filed a stipulation in which they state that a decision should be entered awarding compensation. Respondent denies that any of the vaccinations caused the child’s seizure disorder, or any other injury, and denies that the vaccinations caused her death. Id. at ¶ 6. Nevertheless, the parties agree to the joint stipulation, attached hereto as Appendix A. The undersigned finds the stipulation reasonable and adopts it as the decision of the Court in awarding

¹ Because this decision contains a reasoned explanation for the undersigned’s action in this case, the undersigned intends to post this ruling on the website of the United States Court of Federal Claims, in accordance with the E-Government Act of 2002, 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). 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).

damages, on the terms set forth therein.

The parties stipulate that petitioner shall receive the following compensation:

- 1) **A lump sum of \$79,907.48 in the form of a check payable jointly to petitioner and the Commonwealth of Virginia, Department of Medical Assistance Services. Petitioner agrees to endorse this payment to the Commonwealth of Virginia, Department of Medical Assistance Services. This amount represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the Commonwealth of Virginia may have against any individual as a result of any Medicaid payments the Commonwealth of Virginia has made to or on behalf of Asia Copperthite 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 January 2, 2008, under Title XIX of the Social Security Act; and**
- 2) **A lump sum payment of \$175,000.00 in the form of a check payable to petitioner, as legal representative of Asia Copperthite's estate. This amount represents compensation for all remaining damages that would be available under 42 U.S.C. § 300aa-15(a).**

Id. at ¶ 8.

The undersigned approves the requested amounts for petitioner's compensation. Accordingly, an award should be made consistent with the stipulation.

The clerk of the court **SHALL ENTER JUDGMENT** in accordance with the terms of the parties' stipulation.²

IT IS SO ORDERED.

s/ Thomas L. Gowen
Thomas L. Gowen
Special Master

² Pursuant to Vaccine Rule 11(a), entry of judgment is 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

ASHLEY COPPERTHITE, as)	
Next Friend and Mother of)	
Asia Copperthite, deceased,)	
)	
Petitioner,)	No. 11-457V
)	Special Master Gowen
v.)	
)	
SECRETARY OF HEALTH AND)	
HUMAN SERVICES,)	
)	
Respondent.)	

STIPULATION

The parties hereby stipulate to the following matters:

1. A petition for vaccine compensation on behalf of the estate of Asia Copperthite ("Asia") was filed under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-10 to -34 (the "Vaccine Program"). The petition seeks compensation for Asia's injury and death, which petitioner alleges were caused by her receipt of the Pediarix (DTaP, Hepatitis B, and Inactivated Poliovirus Vaccine), Hib, and Prevnar (pneumococcal) vaccine, which vaccines are contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. Asia received immunizations on January 2, 2008.
3. The vaccines were administered within the United States.
4. Petitioner alleges that Asia suffered from a seizure disorder as a result of her vaccinations, and that she subsequently died as a result of her alleged vaccine-related injury.
5. Petitioner represents that there has been no prior award or settlement of a civil action

for damages on behalf of Asia Copperthite as a result of her alleged injury or his death.

6. Respondent denies that any of the vaccinations administered to Asia caused a seizure disorder, or any other injury, and denies that her January 2, 2008 immunizations caused her death.

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 \$79,907.48 in the form of a check payable jointly to petitioner and the Commonwealth of Virginia, Department of Medical Assistance Services. Petitioner agrees to endorse this payment to the Commonwealth of Virginia, Department of Medical Assistance Services. This amount represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the Commonwealth of Virginia may have against any individual as a result of any Medicaid payments the Commonwealth of Virginia has made to or on behalf of Asia Copperthite 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 January 2, 2008, under Title XIX of the Social Security Act; and

b. A lump sum payment of \$175,000.00 in the form of a check payable to petitioner, as legal representative of Asia Copperthite'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 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. Sec. 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. sec. 1396 et seq.)), or by 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. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as conservator/legal representative of Asia Copperthite's estate under the laws of the Commonwealth of Virginia. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as guardian(s)/conservator(s) of Asia Copperthite's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian(s)/conservator(s) of the estate of Asia Copperthite 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(s)/conservator(s) of the estate of Asia Copperthite upon submission of written documentation of such appointment to the Secretary.

13. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity and as legal representative of the estate of Asia Copperthite, on behalf of herself, the estate, and on behalf of Asia Copperthite's 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 Asia Copperthite resulting from, or alleged to have resulted from, vaccinations administered on January 2, 2008, as alleged in a petition for vaccine compensation filed on or about July 11, 2011, in the United States Court of Federal Claims as petition No. 11-457V.

14. 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.

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 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.

16. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that any of the vaccinations administered to Asia Copperthite on January 2, 2008, caused a seizure disorder or any other injury or her death.

Respectfully submitted,


PETITIONER:


ASHLEY COPPERTHITE

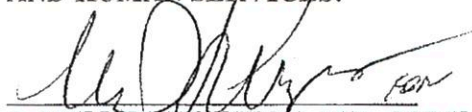
**ATTORNEY OF RECORD FOR
PETITIONER:**


ELAINE WHITFIELD SHARP
Whitfield Sharp & Sharp, LLC
196 Atlantic Avenue
Marblehead, MA 01945
(781) 639-1862

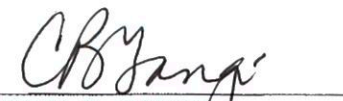
**AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:**


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

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


A. MELISSA HOUSTON, M.D., M.P.H., FAAP
Director, Division of Injury
Compensation Programs
Healthcare Systems Bureau
U.S. Department of Health
and Human Services
5600 Fishers Lane
Parklawn Building, Mail Stop 11C-26
Rockville, MD 20857

**ATTORNEY OF RECORD FOR
RESPONDENT:**


CLAUDIA B. GANGI
Senior Trial Attorney
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
(202) 616-4138

Dated: 2-1-16