

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 15-631V

Filed: June 9, 2016

UNPUBLISHED

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DANIEL NEIMAN and ALLYSON F., \*  
NEIMAN, as parents and legal \*  
Representatives of their minor son \*  
N.K.N. \*

Petitioner, \*

v. \*

SECRETARY OF HEALTH \*  
AND HUMAN SERVICES, \*

Respondent. \*

Ruling on Entitlement; Concession;  
Rotavirus;  
Intussusception; Cause-in-Fact;  
Special Processing Unit (“SPU”)

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*Elizabeth Martin Muldowney, Rawls, McNelis and Mitchell, P.C., Richmond, VA, for petitioner.*

*Camille Michelle Collett, U.S. Department of Justice, Washington, DC, for respondent.*

### **RULING ON ENTITLEMENT**<sup>1</sup>

**Dorsey**, Chief Special Master:

On June 19, 2015, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that following administration of a number of vaccinations, including rotavirus vaccine, N.K.N. developed severe intussusception requiring surgical intervention. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On June 8, 2016, respondent filed her Rule 4(c) report in which she concedes that petitioner is entitled to compensation in this case. Respondent’s Rule 4(c) Report

<sup>1</sup> Because this unpublished ruling contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website,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.

<sup>2</sup> 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).

at 1. Specifically, respondent concluded that the facts of the case “support a finding that N.K.N.’s intussusception, more likely than not, was caused in fact by the administration of the rotavirus vaccine.”<sup>3</sup> *Id.* at 5. Respondent further agrees that “entitlement to compensation is appropriate under the terms of the Vaccine Act.” *Id.*

**In view of respondent’s concession and the evidence before me, the undersigned finds that petitioner is entitled to compensation.**

**IT IS SO ORDERED.**

**s/Nora Beth Dorsey**

Nora Beth Dorsey  
Chief Special Master

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<sup>3</sup> Respondent noted that “Intussusception was added to the Vaccine Table as an injury for the rotavirus vaccine on July 23, 2015. Since the petition in this case was filed on June 19, 2015, prior to the Table amendment taking effect, petitioners are unable to assert a Table intussusception injury claim.” *Id.* at 5 (citations omitted).