

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

DANIEL MARTZ and TARA MARTZ,
parents of C.M., a minor,

Petitioners,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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No. 12-329V

Special Master Christian J. Moran

Filed: July 29, 2013

Stipulation; pneumococcal conjugate
vaccine (PCV); hepatitis A (hep A) vaccine;
varicella vaccine; seizure; stroke;
neurological injury

Ronald C. Homer, Conway, Homer & Chin-Caplan, P.C., Boston, MA, for Petitioners;
Lisa A. Watts, United States Department of Justice, Washington, D.C., for Respondent.

UNPUBLISHED DECISION¹

On July 22, 2013, respondent filed a stipulation concerning the petition for compensation filed by Daniel and Tara Martz on May 24, 2012. In their petition, petitioners alleged that the pneumococcal conjugate, hepatitis A, and varicella vaccines, which are contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. §100.3(a), and which their son received on June 5, 2009, caused him to suffer a neurological injury, later identified as a seizure and stroke and the residual effects of these injuries. Respondent denies that the pneumococcal conjugate, hepatitis A, and/or varicella vaccines caused C.M.'s seizure, stroke, or any other injury, and further denies that C.M.'s current disabilities are sequelae of a vaccine-related injury

Nevertheless, the parties agree to the joint stipulation, attached hereto as Appendix A. The undersigned finds said stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

¹ The E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002), requires that the Court post this decision on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

Damages awarded in that stipulation include:

A lump sum payment of \$205,075.72 in the form of a check payable to petitioners, Daniel Martz and Tara Martz, as guardians/administrators of C.M.'s estate. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 12-329V according to this decision and the attached stipulation.²

Any questions may be directed to my law clerk, Tucker McCarthy, at (202) 357-6392.

IT IS SO ORDERED.

s/Christian J. Moran
Christian J. Moran
Special Master

² Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

DANIEL MARTZ and TARA MARTZ, parents of C.M., a minor,)	
)	
Petitioners,)	<u>ECF</u>
)	
v.)	No. 12-329V
)	Special Master
SECRETARY OF HEALTH AND HUMAN SERVICES,)	Christian J. Moran
)	
Respondent.)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Daniel and Tara Martz (“petitioners”) filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34, as amended (the “Vaccine Program”), on behalf of their minor son, C.M. Petitioners seek compensation for neurologic injuries allegedly related to C.M.’s receipt of pneumococcal conjugate vaccine (“PCV”), hepatitis A (“Hep A”) vaccine, and varicella vaccines, which vaccines are contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3(a).

2. C.M. received the PCV, Hep A, and varicella vaccines on June 5, 2009.

3. The vaccines were administered within the United States.

4. Petitioners allege that C.M. suffered a seizure and a stroke that were caused-in-fact by the PCV, Hep A, and/or varicella vaccines he received. Petitioners further allege that C.M. suffered the residual effects of these injuries for more than six months.

5. Petitioners represent that there has been no prior award or settlement of a civil action for damages on C.M.’s behalf as a result of his condition.

6. Respondent denies that the PCV, Hep A, and/or varicella vaccines caused C.M.'s seizure, stroke, or any other injury, and further denies that C.M.'s current disabilities are 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 payment:

A lump sum of \$205,075.72 in the form of a check payable to petitioners as guardians/administrators of C.M.'s estate. This amount represents compensation for all 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. Payments 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. Petitioners represent that they presently are, or within 90 days of the date of judgment will become, duly authorized to serve as guardians/administrators of C.M.'s estate under the laws of the State of Florida. No payments pursuant to this Stipulation shall be made until petitioners provide the Secretary with documentation establishing their appointment as guardians/administrators of C.M.'s estate. If petitioners are not authorized by a court of competent jurisdiction to serve as guardians/administrators of C.M.'s estate 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/administrator of the estate of C.M. upon submission of written documentation of such appointment to the Secretary.

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

14. In return for the payments described in paragraphs 8 and 9, petitioners, in their individual capacities, and as guardians/conservators of C.M.'s estate, on behalf of C.M. and his 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 C.M. resulting from, or alleged to have resulted from, the PCV, Hep A, and/or varicella vaccines administered to C.M. on June 5, 2009, as alleged by petitioners in a petition for vaccine compensation filed on May 24, 2012, in the United States Court of Federal Claims as petition No. 12-329V.

15. If C.M. 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 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.

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 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 PCV vaccine, Hep A vaccine, and/or varicella

vaccine caused C.M.'s seizure or stroke, or any other injury, or that C.M.'s current disabilities are sequelae of any vaccine-related injury.

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

END OF STIPULATION

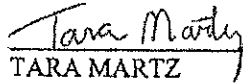
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Respectfully submitted,

PETITIONERS:



DANIEL MARTZ

**ATTORNEY OF RECORD FOR
PETITIONERS:**

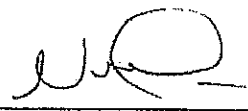

TARA MARTZ

**AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:**


Ronald C. Homer by Amy J. Pashano *Rule 83.1(c)(2)*
RONALD C. HOMER, ESQ.
CONWAY, HOMER & CHIN-CAPLAN, P.C.
16 Shawmut Street
Boston, MA 02116
Tel: (617) 695-1990


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:**


LISA A. WATTS
Senior Trial Attorney
Torts Branch
Civil Division
U. S. Department of Justice
P. O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
Tel: (202) 616-4099

DATE: 7/22/2013