

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 07-364V

Filed: March 24, 2009

Not for publication

\*\*\*\*\*

KAREN A. HARBIN, as Personal \*  
Representative of the Estate of RYKA \*  
NICOLE HARBIN, Deceased, and \*  
RICHARD GEORGE HARBIN and \*  
KAREN ANN HARBIN, as Natural Parents \*  
of RYKA NICOLE HARBIN, Deceased, \*

Petitioners, \*

v. \*

Damages decision based on  
stipulation; delayed systemic  
reaction resulting in death following  
influenza vaccination

SECRETARY OF THE DEPARTMENT \*  
OF HEALTH AND HUMAN SERVICES, \*

Respondent. \*

\*\*\*\*\*

M. Clay Alspaugh, Birmingham, AL, for petitioners.  
Michael P. Milmo, Washington, DC, for respondent.

### DECISION AWARDING DAMAGES<sup>1</sup>

On March 20, 2009, the parties filed the attached stipulation, in which they agreed to settle this case and described the settlement terms. Petitioners seek compensation for Ryka Harbin's death, which they allege was related to Ryka's receipt of an influenza vaccine received on December 8, 2000. Respondent denies that Ryka's death was related in any way to her

---

<sup>1</sup> Because this decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would constitute a clearly unwarranted invasion of privacy. When such a decision is filed, petitioner has 14 days to identify and move to delete such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access.

influenza vaccination. Nonetheless, the parties agreed to resolve this matter informally.

The court hereby adopts the parties' said stipulation, attached hereto, and awards compensation in the amount and on the terms set forth therein. Pursuant to the stipulation, the court awards a lump sum payment of **\$100,000.00** in the form of a check payable to petitioners, as legal representatives of the estate of Ryka Nicole Harbin. This amount represents compensation for all damages 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 of the court is directed to enter judgment herewith.<sup>2</sup>

**IT IS SO ORDERED.**

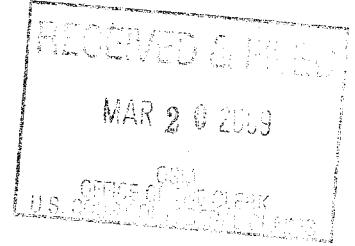
Dated: Mar. 24, 2009

Laura D. Millman  
Laura D. Millman  
Special Master

---

<sup>2</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.

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



\*\*\*\*\*

**KAREN A. HARBIN**, as personal representative  
of the estate of **RYKA NICOLE HARBIN**,  
deceased, and **RICHARD GEORGE HARBIN**  
and **KAREN ANN HARBIN**, as natural parents  
of **RYKA NICOLE HARBIN**, deceased,

Petitioners,

v.

**SECRETARY OF HEALTH  
AND HUMAN SERVICES**,

Respondent.

\*\*\*\*\*

No. 07-364V  
Special Master  
LAURA D. MILLMAN

**STIPULATION**

It is hereby stipulated by and between the parties, the following matters:

1. On behalf of their daughter, Ryka Nicole Harbin ("Ryka"), petitioners filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-10 to 300aa-34 (Vaccine Program). The petition seeks compensation for Ryka's death, which petitioners allege was related to Ryka's receipt of an influenza vaccine, a vaccine contained in the Vaccine Injury Table (Table), 42 C.F.R. § 100.3.
2. Ryka received her influenza vaccination on December 8, 2000.
3. The vaccine was administered within the United States.
4. Petitioners allege that Ryka died as a result of suffering a delayed systemic immune reaction to her December 8, 2000, influenza vaccination.
5. Petitioners represent that there has been no prior award or settlement of a civil action for

damages as a result of Ryka's death.

6. Respondent's Rule 4 Report denies that Ryka's death was related in any way to her December 8, 2000, influenza vaccination.

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 payment of \$100,000.00 in the form of a check payable to petitioners, as legal representatives of the estate of Ryka Nicole Harbin. This amount represents compensation for all damages 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 Special Master shall preside over further proceedings to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. 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.

11. In return for the payments described in paragraphs 8 and 9, petitioners, on behalf of themselves, and their heirs, executors, administrators, successors or assigns, do forever and fully expressly release, acquit and discharge the Secretary of Health and Human Services and the United

States of America from any and all actions, causes of action, agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature on account of, or in any way growing out of, any and all known or unknown personal injuries to, and death of Ryka Nicole Harbin, resulting from, or alleged to have resulted from, the influenza vaccination administered on December 8, 2000, as alleged by petitioners in a petition for vaccine compensation filed on June 8, 2007, in the United States Court of Federal Claims as petition No. 07-364V.

12. In the event that the Special Master fails to issue a decision in complete conformity with the terms of this Stipulation or in the event 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 null and void at the sole discretion of either party.

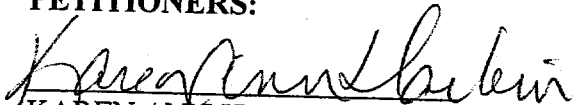
13. This Stipulation expresses a full and complete settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to.

14. All rights and obligations of petitioners hereunder shall apply equally to petitioners' successors and assigns.

END OF STIPULATION


Respectfully submitted,

**PETITIONERS:**

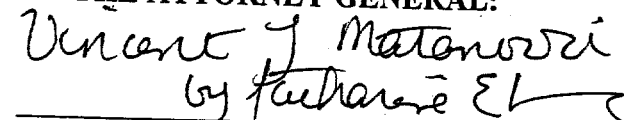
  
KAREN ANN HARBIN

  
RICHARD GEORGE HARBIN

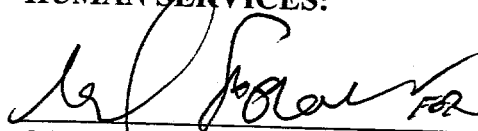
**ATTORNEY OF RECORD FOR  
PETITIONERS:**

  
M. CLAY ALSPAUGH, ESQ.  
Smith & Alspaugh  
1100 Financial Center  
505 20<sup>th</sup> Street North  
Birmingham, AL 35203  
(205) 324-8910

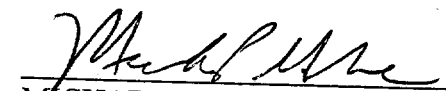
**AUTHORIZED REPRESENTATIVE  
OF THE ATTORNEY GENERAL:**

  
VINCENT J. MATANOSKI  
Acting 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:**

  
GEOFFREY EVANS, M.D.  
Director, Division of  
Vaccine Injury Compensation  
Health Systems Bureau  
U.S. Department of Health  
and Human Services  
5600 Fishers Lane  
Room 11C-26  
Rockville, MD 20857

**ATTORNEY OF RECORD FOR  
RESPONDENT:**

  
MICHAEL P. MILMOE  
Senior Trial Counsel  
Torts Branch  
Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, D.C. 20044-0146  
(202) 616-4125

Dated: 3/20/2009