

March 27, 2002

OFFICE OF SPECIAL MASTERS
Richard B. Abell
Special Master

RE: Helms v. DHHS (No. 96-518V)
Reply to Kirk McCarville's Response dated 2/26/02

Dear Special Master Abell,

I am not an educated person like Kirk McCarville. I have only a high school diploma. Yet now I find myself embattled in a war of words with my former attorney. I have raised a complaint against the conduct of my attorney, who has responded by denying the truth.

The complaint regarding the conduct of my attorney centers around two areas.

1. **McCarville relied on Dr. DeFendini as our expert witness despite his serious illness and chemotherapy treatments**
2. **McCarville allowed my Statute of Limitations to expire.**

RELIED ON DR. DEFENDINI

In June of 1998, when we found out that Dr. DeFendini was terminally ill and had to undergo chemotherapy treatments, I asked McCarville to change expert witnesses. I told him that I knew first hand what chemotherapy did to people. I told McCarville how my father died within one month of his second chemotherapy treatment. Not only was this communicated to McCarville in correspondence, my husband and I had a telephone conference with both Kirk and Kim McCarville requesting the use of a new expert witness. Kirk McCarville told us that this was not allowed. On the day before trial, July 27, 1998, in Kirk McCarville's office, my husband and I again pleaded with Kirk McCarville to go to Special Master Abell to request a change in our expert witness. We stated again that Dr. John Menkes would take our case - and even offered to pay for his services. (Exhibit 19) Letter from Dr. John Menkes verifying our conversation as early as March 1995.

We thought there were extenuating circumstances to warrant the change of our expert witness. McCarville told us again that the court would not make any exceptions. Kirk McCarville justified his decision to rely upon DeFendini by misrepresenting the nature of the National Vaccine Injury Compensation Program. Kirk McCarville disregarded our requests and lied to us.

After the hearing on July 28, 1998 my husband questioned Kirk McCarville about DeFendini's inadequate preparation and his belligerent and quarrelsome demeanor during his testimony. We told him that we were not pleased with the shortcomings of DeFendini's testimony. We asked him to please bring Dr. DeFendini's illness, to Special Master Abell's attention and request that

we be allowed to submit another expert's testimony. McCarville stated "The Court is not going to allow that. If they make an exception for you then they would have to make an exception for everyone who didn't like the outcome of their expert's testimony". This was yet another lie. McCarville should have asked for the opportunity to remedy the damage done by Dr. DeFendini's illness. McCarville should have swallowed his pride and admitted to the court that he was wrong to rely upon Dr. DeFendini- any competent attorney would have. But Kirk McCarville didn't want to bring this to the Court's attention; He was concerned about himself and his appearance in front of the court and not the appearance of his client's case.

Kirk McCarville is being less than truthful regarding his preparation of our expert witness prior to the hearing. He states he had "...discussed his testimony through lengthy telephonic conversations... both conferences taking place within days of the trial".

However, Dr. DeFendini had not looked at Respondent's exhibits in over a year prior to our hearing as he tells the court when questioned regarding Respondent's exhibits Dr. DeFendini states that, "...As I told you, I haven't looked at this in over a year..." (Exhibit 20 - Court Transcripts, page 95, lines 4 - 11)

The very next day (July 29, 1998) Kirk McCarville sent us a letter (Exhibit 21) where he states that..."After giving this matter further thought, I believe that the briefs will be extremely important because I do not feel that as of this date the special master is leaning in either direction in terms of making a decision." In this *same* letter, McCarville states: "If he is up to it, I'm sure he will provide assistance..." (with the rebuttal of Dr. Rourke's testimony).

In July, August and September of 1998 McCarville asked us to help obtain scientific research to rebut the argument of Dr. Rourke. (Exhibits 22 & 23) I obtained the help of Dr. Viera Scheibner, a research scientist. (Exhibit 24) McCarville also consulted a physician in Phoenix, Dr. Coons, to review the court transcripts.

What Kirk McCarville failed to do was give Special Master Abell the chance to decide if he would allow us another expert.

(Exhibit 25) On September 28, 1998 we sent Kirk McCarville a letter requesting a new expert witness.

STATUTE OF LIMITATIONS

McCarville has said that I omitted material information to the court. He claims that I was represented by another Law Firm, Ravis & Dominguez, in my claims against the manufacturer of the vaccine that caused Zachary's death.

This is not true. The reference to this firm in McCarville's response is misleading. I hired Ravis & Dominguez shortly after Zachary's death, initially because of concern about the tone of the coroner's questions to me. When McCarville agreed to represent me, he told me to instruct Ravis & Dominguez to cease all work related to this case. Kirk McCarville advised me with regard to both my Program claim and the availability of a case against the manufacturer of the vaccine

Zachary received. Kirk McCarville's misrepresentation about Ravis & Dominguez is only relevant in that it demonstrates McCarville's affection for half-truths.

The attached documents clearly indicate that he directed me to discharge my previous attorney of all work they were doing on my case. Even his own letter to the Coroner's office states that he, 'represents the estate of Zachary Helms.'

(Exhibit 26)

Letter to Kim McCarville dated November 29, 1995, informing him of why Ravis & Dominguez had been retained.

(Exhibit 27)

Letter to Ravis & Dominguez dated November 29, 1995, in which I informed them that I had retained Kirk McCarville. At the request of Mr. McCarville I told them to cease all work related to this case.

(Exhibit 28)

Letter from McCarville to the County Coroner, wherein he states: ... "Please be advised that this office represents the Estate of Zachary Helms". Please note that Kirk McCarville copied The Law Firm of Ravis & Dominguez as well.

(Exhibit 29)

Letter from Ravis & Dominguez, in which they acknowledge I have retained a law firm from Arizona. Additionally, they state that no claims were pending with the County. This letter was sent to Kim McCarville, at his request.

Kirk McCarville is lying to the Court regarding his professional responsibilities as my attorney. The exhibits incontrovertibly prove:

1. Kirk McCarville knew **exactly** why I had retained my previous attorney.
2. Kirk McCarville had me **discharge** my previous attorney.
3. Kirk McCarville was **retained** as my attorney prior to the expiration of my statute of limitations.
4. Kirk McCarville documented that he was the attorney for the estate of Zachary Helms **prior** to the expiration of my statute of limitations.

I think Dr. DeFendini's testimony did make a difference to the outcome of Zachary's case. I believe if we had an opportunity to submit additional expert testimony after the hearing it may have changed the outcome of my son's case. I further believe had my *"Treatise" been submitted to Special Master Abell along with additional expert testimony it more than likely would have changed the outcome of Zachary's case.

*Petitioner's Amended Motion For Review, which was filed on March 15, 2000. The higher court did not consider it because it was not presented to Special Master Abell.

I respectfully request relief from the Court as set forth in my Complaint of Attorney Conduct filed on January 28, 2002.

Respectfully,

A handwritten signature in cursive script that reads "Michelle Helms-Gaddie". The signature is written in black ink and is positioned above the typed name.

Michelle Helms-Gaddie (pro-per)

JOHN H. MENKES, M.D.

March 19, 2002

Mrs. Michelle Helms-Gaddie

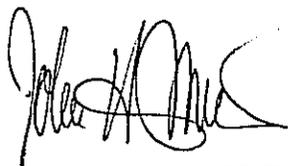
Dear Mrs. Helms-Gaddie:

As a consequence of your letter, I have gone through the log of my telephone calls of March 1995, but could not find your call. This does not mean that your call did not come to me, but rather that I was able to accept it directly. I do have some recollection of our conversation of Zachary's brain swelling, and I think that my recommendation of Mr. Dodd, and my agreeing to be your expert witness is in line with what I would have said under these circumstances. I do not however have any record of Mr. Dodd contacting me about Zachary at any time. Rather, I have an extensive file on your boy that was generated by the office of Mr. Kirk McCarville in the process of his appeal of the decision favoring the respondent.

As you know, I felt strongly that this decision was unfair, and I remember producing several citations for Mr. McCarville demonstrating indicated that pertussis vaccine can induce brain swelling.

Should you wish any further information, I will be pleased to provide it to you if possible.

Sincerely yours,



John H. Menkes, M.D.
Professor Emeritus of Neurology and Pediatrics
University of California, Los Angeles,
Director Emeritus of Pediatric Neurology
Cedars Sinai Medical Center

DeFENDINI - CROSS

1 and then I'll tell you whether I agree or not, but I can't
2 tell you none of the things we observed were related without
3 telling you what they are.

4 Q Have you read the IOM's discussion of pathology
5 related to DPT encephalopathy?

6 A Whose now?

7 Q The Institute of Medicine.

8 A I don't recall that I have.

9 Q That's a Respondent --

10 A As I told you, I haven't looked at this in over a
11 year.

12 Q Okay, this is Respondent's Exhibit O. It begins
13 on page 89, and I'll take the liberty of describing it and
14 please tell me if you disagree. But it describes all of the
15 studies of pathology results in suspected DPT encephalopathy
16 cases, and then it concludes, let me read that part.

17 "Review of both the acute and chronic groups
18 again indicated" -- this is on page 90.

19 "Review of both the acute and chronic groups
20 again indicated no specific findings that were
21 consistently observed following administration of
22 pertussis vaccine. The authors concluded that,
23 quote, 'Neither the cerebral changes in the
24 present study nor those abstracted from the

exhibit 21

KIRK A. McCARVILLE, P.C.

A PROFESSIONAL CORPORATION
ATTORNEY AT LAW

CERTIFIED SPECIALIST
TAX LAW

KIRK A. McCARVILLE

2400 E. ARIZONA BILTMORE CIRCLE
SUITE 1430
PHOENIX, ARIZONA 85016

(602) 468-1714
FAX (602) 468-2404
KMccarvill@aol.com

July 29, 1998

Michelle Helms

Dear Michael and Michelle:

I am writing to follow up on our discussion regarding the status of this matter.

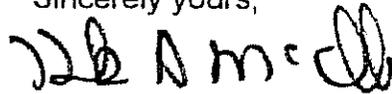
First, as you know, the court has ordered briefs to be filed with our first brief due on September 28, 1998.

After giving this matter further thought, I believe that the briefs will be extremely important because I do not feel that as of this date the special master is leaning in either direction in terms of making a decision.

I have written to Dr. DeFendini and requested his assistance in helping us analyze Dr. Rorke's testimony. If he is up to it I am sure that he will provide that assistance. I believe that the major thrust of our situation ought to be to find publications that support our position and undermine theirs. I have asked Dr. DeFendini to give particular consideration to two matters. First, the likelihood that Zachary suffered suffocation over a long period of time and secondly the medical literature regarding significant brain edema over such a short period of time.

For your information, I have enclosed two lists. Each reflects the literature that has been submitted to the court to date. I am in the process of doing our search for additional information which will help us if in fact there is such literature. I will get back to you to the extent that I feel that we can incorporate you in to the research.

Sincerely yours,



Kirk A. McCarville

KAM/lr

Enc.

Exhibit 22

KIRK A. McCARVILLE, P.C.

A PROFESSIONAL CORPORATION
ATTORNEY AT LAW

KIRK A. McCARVILLE

CERTIFIED SPECIALIST
TAX LAW

2400 E. ARIZONA BILTMORE CIRCLE
SUITE 1430
PHOENIX, ARIZONA 85016

(602) 468-1714
FAX (602) 468-2404
KMccarvill@aol.com

MEMO

SENT VIA FACSIMILE (415) 507-1504

To: Mike & Michelle Gaddy

From: Kim McCarville

Subject: NVIC

Date: July 30, 1998

Dear Mike and Michelle:

As previously discussed, there are certain areas of research that need to be done to support the argument of Dr. Rorke.

Specifically, those areas are as follows:

1. When a two year old child suffocates, what neurological pathological findings would one expect to see on autopsy and, in what amount of time would those findings present themselves;
2. That the DPT vaccine (as opposed to the pertussis/whooping cough disease) has toxic substances (endotoxins) contained within it when manufactured.

KEM/lr

MEMO

SENT VIA FACSIMILE (415) 507-1504

To: Mike & Michelle Gaddy

From: Kim-McCarville

Subject: NVIC

Date: August 7, 1998

Dear Mike and Michelle:

As previously discussed, there are certain areas of research that need to be done to rebut the argument of Dr. Rorke.

Specifically, those areas are as follows:

1. When a two year old child suffocates, what neurological pathological findings would one expect to see on autopsy and, in what amount of time would those findings present themselves;

2. That the DPT vaccine (as opposed to the pertussis/whooping cough disease) has toxic substances (endotoxins) contained within it when manufactured.

KEM/lr

PAY TO THE ORDER OF

***Dr. Viera Scheibner ***

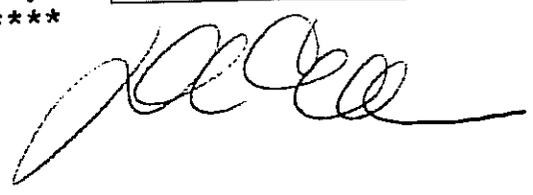
AMOUNT ***AUD331.62***

AMOUNT
(In words)

Australian dollar: Three hundred thirty-one and 62/100***

PAYABLE AT

ANZ, Melbourne, Australia
Corr Acct Svcs, #crsbusadd
As Agent for Citibank, Ltd.



NON-NEGOTIABLE

CONTRACT #
[]

CUSTOMER ACCOUNT #
0803083050

Foreign Amount	:	331.62
Rate	:	603095
U.S. Amount	:	31.5 200
Fee	+	15.00
TOTAL U.S. \$	=	215.00

CUSTOMER NAME:
ADDRESS:
CITY/STATE/ZIP:
PHONE:

CUSTOMER COPY

September 28, 1998

Kirk McCarville
2400 E. Arizona Biltmore Circle, Suite 1430
Phoenix, AZ 85016

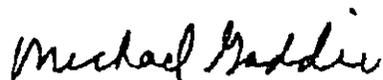
Dear Kirk,

I received your letter of September 25, 1998 regarding the recent phone conversation I had with Kim regarding Dr. DeFendini's testimony at the hearing. During that conversation, Kim assured me that Special Master Abel was sensitive to Dr. DeFendini's serious illness and that we should not be worried about his testimony - the case would be decided based on the medical reports. Additionally, Kim said he thought Dr. DeFendini passed away.

I reiterated to Kim that we needed to get a new expert witness who was familiar with the program. I suggested that we retain Dr. Menkes, whom Michelle has had several conversations with.

Your letter states that you advanced fees to consult with Dr. Stephen Coons. I'm not sure why you chose him; maybe it was because he is located in Phoenix. However, we have agreed to advance the fees for a new expert, and request that you retain one whom is experienced testifying within the program. Surely, the court will allow us additional time to respond, if you let them know that Dr. DeFendini has passed away.

Sincerely,



Michael Gaddie

November 29, 1995

Mr. Kim McCarville
3404 W. Cheryl Drive, #A-250
Phoenix, AZ 85051

Dear Mr. McCarville,

The meeting I had at the coroner's office was on April 20, 1995. My brother and sister-in-law went with me. Zachary's pediatrician, Dr. Schwartz was there as well. When we got there Rick Bogan had me go into a back room and they would not allow my brother to go with me. It was terrible - the things they were asking. They were even trying to show me photos of my son's body. At one point, Zachary's pediatrician interrupted the meeting and asked if I needed an attorney present. Although they told him I didn't - I allowed the meeting to continue because they told me if I didn't they would call for some formal meeting and I would have to go through it all over again. After the meeting was over Dr. Schwartz told my brother and me that "the meeting was very strange". He suggested that I retain a criminal law attorney in case criminal charges were filed.

The only reason I retained this firm was because Dr. Schwartz thought criminal charges might be brought against me. When we got home my brother and sister-in-law listened to the tape of the meeting and thought I should contact one as well. We made a few phone calls and Gloria Allred's office referred us to the following firm:

Ravis & Dominguez
Attorneys At Law
4978 Santa Anita Avenue, #205
Temple City, CA 91780
(818) 350-5838 Telephone
(818) 350-5835

Century City Office
2029 Century Park East #600
Los Angeles, Ca 90067
(310) 552-9029

Per your request, I left a message at The Law Offices of Ravis & Dominguez instructing them to cease all work related to this case. I am sending them the following letter as well. Per our conversation, my rights to bring suit against the pharmaceutical company will be protected through the Compensation Program. Please let me know if you would like a copy of the taped meeting from the coroner's office.

Sincerely,



Michelle Helms

November 29, 1995

Mark Ravis
Ravis & Dominguez
2020 Century Park East, #600
Los Angeles, CA 90067

Dear Mr. Mark Ravis,

I was able to retain a law firm that specializes in the Federal Vaccine Program. They have been involved with this type of litigation since it 's inception and haven't lost a case yet.

The law firm of Kirk A. McCarville advised me to have you cease all work related to this case. I was advised that someone from there office will be contacting you shortly.

If possible, I would like for you to return to me the tape from the coroner's questioning as I would like to provide it to my new counsel.

Sincerely,



Michelle Helms

Cc: Mr. Kim McCarville

KIRK A. MCCARVILLE, P.C.

exhibit 28

KIRK A. MCCARVILLE

A PROFESSIONAL CORPORATION
ATTORNEY AT LAW

CERTIFIED SPECIALIST - TAX LAW

3404 WEST CHERYL DRIVE
SUITE A-250
PHOENIX, ARIZONA 85051

(602) 866-9566
FAX (602) 866-3799

December 21, 1995

Rick Bogan
Deputy Coroner
Riverside County Coroner's Office
3610 11th St.
Riverside, CA 92501

RE: Zachary David Lee Helms
Date of Death: January 27, 1995

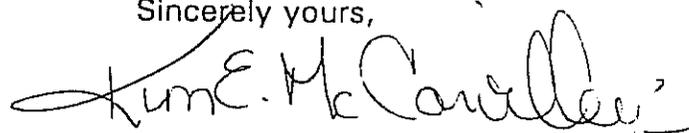
Dear Mr. Bogan:

Please be advised that this office represents the Estate of Zachary Helms. I have enclosed a medical authorization signed by Zachary's mother for your files.

The purpose of this correspondence is to request that you forward the autopsy report and findings, with any additional supplements, revisions or amendments, to this office at your earliest convenience.

Obviously, should you have any questions regarding this correspondence or its enclosure, please do not hesitate to contact me.

Sincerely yours,



Kim Edward McCarville
Investigator/Paralegal

KEM/lr
Enc.: Medical Authorization
cc: Michelle Helms
Mark Ravis

RAVIS & DOMINGUEZ

ATTORNEYS AT LAW

4978 Santa Anita Avenue, Suite 205
Temple City, California 91780
Telephone: (818) 350-5838
Fax: (818) 350-5835

Century City Office
2029 Century Park East, Suite 600
Los Angeles, CA 90067
Telephone: (310) 552-9029
Fax: (310) 277-3822

Mark Ravis, M.D., J.D.
Juan Carlos Dominguez, Esq.
Karen Camus, Esq.

*Edward C. Stark, Esq.
of counsel

*Also admitted in New York

December 29, 1995

Ms. Michelle Helms

Re: Zachary Helms - Vaccine Related Death

Dear Ms. Helms:

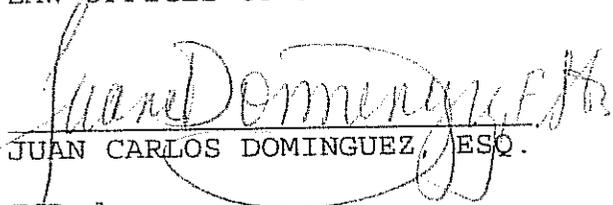
I am in receipt of your telephonic message wherein you have instructed us to cease all work related to this case. You further advised that you had retained a firm in Arizona to continue with the case. Accordingly, we will close our file at this point and do no further work on the case. If our understanding of your message is in error, please communicate this fact to us immediately.

Please note that there are no claims pending with the County.

Please have your new attorneys contact us so that we may send them the contents of our file. Also, if you would be so kind, please reimburse us in the amount of \$25.00 which we advanced on your behalf for the purpose of obtaining the Coroner's report.

Mark and I both wish you the best of luck with this case and we are confident that with your drive and determination you will undoubtedly succeed in attaining your goals.

Very truly yours,
LAW OFFICES OF RAVIS AND DOMINGUEZ


JUAN CARLOS DOMINGUEZ, ESQ.

JCD:ds