

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

PATRICIA BLOW, as Trustee for the
heirs and next of kin of
KENN BLOW, decedent,

Petitioner,

v.

**SECRETARY OF HEALTH
AND HUMAN SERVICES**,

Respondent.

No. 09-58V
Special Master
GARY GOLKIEWICZ

STIPULATION

The parties hereby stipulate to the following matters:

1. Petitioner, Patricia Blow, filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 to 34 (the "Vaccine Program") on behalf of her deceased husband, Ken Blow (hereinafter "Mr. Blow," or "decedent"). The petition seeks compensation for injuries allegedly related to Mr. Blow's receipt of the trivalent influenza ("flu") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).

2. Mr. Blow received a flu immunization on or about October 16, 2007.

3. The vaccine was administered within the United States.

4. Petitioner alleges that Mr. Blow suffered an aggressive demyelinating disease as a consequence of his flu vaccination that led to his death on January 21, 2008.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on the decedent's behalf as a result of his alleged injury and death.

6. Respondent denies that the flu vaccine caused Mr. Blow's demyelinating disease or death, and further denies that his death was a 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 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 vaccine compensation payment:

A lump sum of \$230,000.00 in the form of a check payable to petitioner, as Trustee for the heirs and next of kin of Kenn Blow, decedent. 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 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. 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.

11. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity and as Trustee for the heirs and next of kin of Mr. Blow, decedent, and on behalf of the decedent'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. § 300 aa-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 Mr. Blow resulting from, or alleged to have resulted from, the flu vaccination administered on or about October 16, 2007, as alleged by petitioner in a petition for vaccine compensation filed on or about February 2, 2009, in the United States Court of Federal Claims as petition No. 09-58V

12. 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.

13. 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.

14. Petitioner hereby authorizes the respondent to disclose documents filed by petitioner in this case consistent with the Privacy Act and the routine uses described in the National Vaccine Injury Compensation Program System of Records, No. 09-15-0056.

