

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

FLOR HERNANDEZ, trustee for the *
next-of-kin of EMELY IRENE *
HERNANDEZ, a deceased minor *

No. 10-133V
Special Master Christian J. Moran

Petitioner, *

v. *

Filed: January 9, 2013

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Stipulation; influenza (flu) vaccine;
death

Respondent. *

Randall G. Knutson, Farrish Johnson Law Office, Mankato, MN, for Petitioner;
Althea Walker Davis, United States Department of Justice, Washington, DC, for Respondent.

UNPUBLISHED DECISION¹

On January 8, 2013, the parties filed a joint stipulation concerning the petition for compensation filed by Flor Hernandez on behalf of Emily Irene Hernandez on March 1, 2010. In her petition, petitioner alleged that the trivalent influenza vaccine, which is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. §100.3(a), and which Emely received on March 4, 2008, caused Emely's death. Respondent denies that the influenza vaccine caused Emely's death or any other 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.

Damages awarded in that stipulation include:

¹The 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.

- A. A lump sum payment of \$25,000.00 in the form of a check payable to Flor Hernandez, as legal representative of the estate of Emely Hernandez. 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 11-907V according to this decision and the attached stipulation.

Any questions may be directed to my law clerk, Philip Johnson, at (202) 357-6521.

IT IS SO ORDERED.

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

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

FLOR HERNANDEZ, trustee for) the next-of-kin of EMELY IRENE) HERNANDEZ, a deceased minor,)) Petitioner,)) v.)) SECRETARY OF HEALTH) AND HUMAN SERVICES,)) Respondent.)	No. 10-133V Special Master Christian Moran ECF
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STIPULATION

The parties hereby stipulate to the following matters:

1. Flor Hernandez 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 the estate of her minor daughter, Emely Hernandez. The petition seeks compensation for Emely's injury and death allegedly related to her receipt of the trivalent influenza vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Emely received the trivalent influenza vaccination on March 4, 2008.
3. The vaccination was administered within the United States.
4. Petitioner alleges that Emely sustained the first symptom or manifestation of the onset of vaccine-induced influenza B infection on or about March 6, 2008, and that she died as a result thereof on March 10, 2008.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of the estate of Emely Hernandez as a result of Emely's alleged injury or death.

6. Respondent denies that the trivalent influenza vaccine received by Emely caused any injury or death and denies that Emely's death occurred as a result 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 \$25,000.00 in the form of a check payable to petitioner, as the legal representative of the estate of Emely Hernandez. 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. Petitioner represents that she is, or within 90 days of the date of judgment will become, duly authorized to serve as legal representative of the estate of Emely Hernandez under the laws of the State of Minnesota. No payment pursuant to this stipulation shall be made until petitioner provides the Secretary with documentation establishing:

(a) petitioner's appointment as the legal representative of the estate of Emely Irene Hernandez. If petitioner is not authorized by a court of competent jurisdiction to serve as the legal representative of the estate at the time 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 legal representative of the estate of Emely Irene Hernandez upon submission of written documentation of such appointment to the Secretary; or (b) documentation establishing that the father of Emely Irene Hernandez has waived in writing his right to any award on behalf of Emely Irene Hernandez under the National Vaccine Injury Compensation Program.

12. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity and as legal representative of the Estate of Emely Hernandez, on behalf of Emely's heirs, executors, administrators, successors, and 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 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 Emely Hernandez resulting from, or alleged to have resulted from, the trivalent influenza vaccination administered on March 4, 2008, as alleged by petitioner in a petition for vaccine compensation filed on or about March 1, 2010, in the United States Court of Federal Claims as petition No. 10-133V.

13. 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.

14. 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.

15. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the trivalent influenza vaccine received by Emely Hernandez caused her to suffer any injury or death; or that Emely's death occurred as the result of a vaccine-related injury.

16. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns as legal representatives of the Estate of Emely Hernandez.

END OF STIPULATION

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Respectfully submitted,

PETITIONER:



FLOR HERNANDEZ

**ATTORNEY OF RECORD FOR
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DATE: 8 January 2013