

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

No. 08-347V

Filed: February 24, 2011

DANIEL L. AULL and FRANCES C. AULL, *
as Co-Administrators of the Estate of, *
WILLIAM DANIEL BLAKE AULL, deceased, *

Petitioners, *

Joint Stipulation;
DT, MMR, OPV; death

v. *

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

Respondent. *

DECISION ON JOINT STIPULATION¹

Vowell, Special Master:

Daniel L. and Frances C. Aull filed a petition ["Pet."] for compensation under the National Vaccine Injury Compensation Program² on May 12, 2008, on behalf of William Daniel Blake Aull ["Blake"]. Petitioners allege that as a result of the diphtheria-tetanus ["DT"] vaccine, measles-mumps-rubella ["MMR"] vaccine, and oral polio live virus ["OPV"], he received on September 8, 2000, Blake suffered injuries that lead to his death. See Pet. at 1. Specifically, petitioners allege that Blake suffered neurological injuries, which were caused in fact by the vaccines. Stipulation, filed February 22, 2011, at ¶ 4. Petitioners further allege that Blake's death was a result of these injuries. *Id.* Respondent denies that Blake's injuries and death were caused-in-fact by the vaccines he received. Stipulation at ¶ 6.

Nevertheless, the parties have agreed to settle the case. On February 22, 2011,

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). In accordance with Vaccine Rule 18(b), petitioners have 14 days to identify and move to delete medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will delete such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2006).

the parties filed a joint stipulation agreeing to settle this case and describing the settlement terms. Respondent agrees to pay petitioners:

- A lump sum payment of **\$50,000.00**³ in the form of a check payable to petitioners, Daniel L. Aull and Frances C. Aull, as Co-Administrators of the Estate of William Daniel Blake Aull.

This amount represents compensation for all damages that would be available under § 300aa-15(a).

The special master adopts the parties' stipulation attached hereto, and awards compensation in the amount and on the terms set forth therein. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment in accordance with this decision.⁴

IT IS SO ORDERED.

s/ Denise K. Vowell
Denise K. Vowell
Special Master

³ This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party filing a notice renouncing the right to seek review.

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

DANIEL L. AULL and FRANCIS C. AULL, as CO-ADMINISTRATORS of the ESTATE of WILLIAM DANIEL BLAKE AULL, deceased,)	
)	
Petitioners,)	No. 08-347V
)	Special Master Vowell
v.)	
)	
SECRETARY OF HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Petitioners, Daniel L. Aull and Francis C. Aull, as Co-Administrators of the Estate of William Daniel Blake Aull, ("Blake") deceased, 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 May 12, 2008. The petition seeks compensation for injuries and death allegedly related to Blake's receipt of the Diphtheria-Tetanus ("DT") vaccine, Measles-Mumps-Rubella ("MMR") vaccine, and oral Polio live virus ("OPV"), which vaccines are contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).

2. Blake received his DT, MMR, and OPV vaccinations on September 8, 2000.

3. The vaccines were administered within the United States.

4. Petitioners allege that the vaccines caused Blake to sustain vaccine-related injuries to include neurological

injuries, that were caused in fact by the vaccination, and that Blake's vaccine-injuries resulted in his death.

5. Petitioners represent that there has been no prior award or settlement of a civil action for damages on behalf of the Estate of William Daniel Blake Aull as a result of his death.

6. Respondent denies that the DT, MMR, and/or OPV vaccines caused or contributed to Blake's injuries and/or his death.

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 \$50,000.00 in the form of a check payable to petitioners as Co-Administrators of the Estate of William Daniel Blake Aull. 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. 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. Petitioners and their attorneys represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any 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 by entities that provide health services on a pre-paid basis.

12. Petitioners represent that they presently are, or within 90 days of the date of judgment will become, duly authorized to serve as guardians/conservators of Blake's estate under the laws of the State of Kentucky.

13. In return for the payments described in paragraphs 8 and 9, petitioners, in their individual capacities, and as legal representatives of Blake's estate, on behalf of Blake's 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 or death of William Daniel Blake Aull resulting from, or alleged to have resulted from, the DT, MMR, and/or OPV vaccinations administered on September 8, 2000, as alleged by petitioners in a petition for vaccine compensation filed on or about May 12, 2008, in the United States Court of Federal Claims as petition No. 08-347V.

14. 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 null and void at the sole discretion of either party.

15. 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.

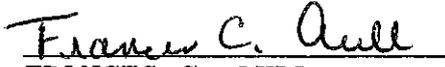
16. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human

Respectfully submitted,

PETITIONERS:



DANIEL L. AULL, as
Co-Administrator of
the Estate of WILLIAM
DANIEL BLAKE AULL

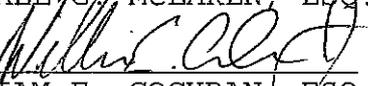


FRANCES C. AULL, as
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DANIEL BLAKE AULL

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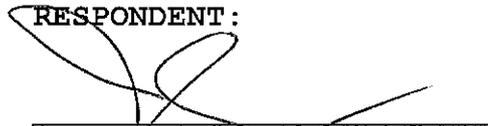
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Dated: 2/22/11