



On July 6, 2009, petitioners, Kevin Tock and Tracy Tock, filed a petition on behalf of their minor child seeking compensation under the National Vaccine Injury Compensation Program (“the Vaccine Program”) for a vaccine-related injury.<sup>3</sup>

Respondent has conceded that petitioners are entitled to compensation due to Bryce Tock suffering an MMR vaccine Table presumptive injury of encephalopathy, which eventually manifested as a chronic encephalopathy.

Informed by respondent’s concession that an award of damages is appropriate, the undersigned finds that petitioner is entitled to compensation under the Vaccine Program.

On December 14, 2012, respondent filed a Proffer on Award of Compensation (Proffer). In that proffer respondent represented that petitioner had agreed to all of the terms set forth therein. Based on the record as a whole, the undersigned finds that petitioners are entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, the court awards petitioners:

1. A lump sum payment of **\$1,116,618.90**, representing compensation for lost future earnings (\$608,527.63), pain and suffering (\$212,027.81), and life care expenses for Year One (\$296,063.46), in the form of a check payable to Attorney Gregory A. Kotsonis as guardian of the estate of Bryce Tock, for the benefit of Bryce Tock;<sup>4</sup>
2. A lump sum payment of \$30,138.81, representing compensation for past unreimbursable expenses, payable to Kevin Tock and Tracy Tock, petitioners;

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substantive order, the parties have 14 days within which to move for the redaction of privileged or confidential information before the document’s public disclosure.

<sup>3</sup> The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C.A. § 300aa-10-§ 300aa-34 (West 1991 & Supp. 2002) (Vaccine Act or the Act). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

<sup>4</sup> The **highlighted** number reflects the corrected amount as indicated in the Parties’ December 20, 2012, Joint Motion for Relief and the undersigned’s Order Granting Relief.

3. A lump sum payment of \$46,357.53, representing compensation for satisfaction of the State of Wisconsin Medicaid lien, payable jointly to petitioner and

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Irving, TX 75038-9984  
Attn: Ms. Melissa Hatcher

4. An amount sufficient to purchase an annuity contract(s), subject to the conditions described in Section II. D. of the attached Proffer, paid to the life insurance company(ies) from which the annuity(ies) will be purchased.

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>5</sup>

**IT IS SO ORDERED.**

s/Patricia E. Campbell-Smith  
Patricia Campbell-Smith  
Special Master

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<sup>5</sup> Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.

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

KEVIN TOCK and TRACY TOCK,	)	
parents and natural guardians of a minor child,	)	
BRYCE TOCK,	)	
	)	
Petitioners,	)	
	)	
v.	)	No. 09-438V
	)	Chief Special Master
SECRETARY OF THE DEPARTMENT OF	)	Campbell-Smith
HEALTH AND HUMAN SERVICES,	)	
	)	
Respondent.	)	
	)	

**RESPONDENT’S PROFFER ON AWARD OF COMPENSATION**

On July 6, 2009, Kevin and Tracy Tock (“petitioners”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986 (“Vaccine Act” or “the Act”) on behalf of their minor son, Bryce Tock, alleging that he developed acute demyelinating encephalomyelitis as a result of the vaccines he received on October 17, 2006, including the measles-mumps-rubella (“MMR”) vaccine. The Secretary of Health and Human Services (“respondent”) filed a Rule 4(c) Report on November 5, 2009, conceding that Bryce Tock suffered the Table injury of encephalopathy following MMR vaccine and recommending that petitioners be awarded compensation. Respondent hereby submits the following proffer regarding the award of compensation.

**I. Items of Compensation**

A. Life Care Items

Respondent engaged life care planner, Jacqueline Morris, RN, BSN, CRRN, CNLCP, to provide an estimation of Bryce Tock’s future vaccine-injury related needs. For the purposes of this proffer, the term “vaccine related” is as described in the

respondent's Rule 4(c) Report filed November 5, 2009. All items of compensation identified in the life care plan are supported by the evidence, and are illustrated by the chart entitled Appendix A: Items of Compensation for Bryce Tock, attached hereto as Tab A.<sup>1</sup> Respondent proffers that Bryce Tock should be awarded all items of compensation set forth in the life care plan and illustrated by the chart attached at Tab A. Petitioners agree.

B. Lost Future Earnings

The parties agree that based upon the evidence of record, Bryce Tock will not be gainfully employed in the future. Therefore, respondent proffers that Bryce Tock should be awarded lost future earnings as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(3)(B). Respondent proffers that the appropriate award for Bryce Tock's lost future earnings is \$608,527.63. Petitioners agree.

C. Pain and Suffering

Respondent proffers that Bryce Tock should be awarded \$212,027.81 in actual and projected pain and suffering. This amount reflects that the award for projected pain and suffering has been reduced to net present value. See 42 U.S.C. § 300aa-15(a)(4). Petitioners agree.

D. Past Unreimbursable Expenses

Evidence supplied by petitioners documents their expenditure of past unreimbursable expenses related to Bryce Tock's vaccine-related injury. Respondent proffers that petitioners should be awarded past unreimbursable expenses in the amount of \$30,138.81. Petitioners agree.

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<sup>1</sup> The chart at Appendix A illustrates the annual benefits provided by the life care plan. The annual benefit years run from the date of judgment up to the first anniversary of the date of judgment, and every year thereafter up to the anniversary of the date of judgment.

E. Medicaid Lien

Respondent proffers that Bryce Tock should be awarded funds to satisfy the State of Wisconsin lien in the amount of \$46,357.53, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of Wisconsin may have against any individual as a result of any Medicaid payments the State of Wisconsin has made to or on behalf of Bryce Tock from the date of his eligibility for benefits through the date of judgment in this case as a result of his vaccine-related injury suffered on or about October 17, 2006, under Title XIX of the Social Security Act.

**II. Form of the Award**

The parties recommend that the compensation provided for Bryce Tock should be made through a combination of lump sum payments and future annuity payments as described below, and request that the special master's decision and the Court's judgment award the following:

A. A lump sum payment of \$1,146,757.71, representing compensation for lost future earnings (\$608,527.63), pain and suffering (\$212,027.81), and life care expenses for Year One (\$296,063.46), in the form of a check payable to Attorney Gregory A. Kotsonis as guardian of the estate of Bryce Tock, for the benefit of Bryce Tock.

B. A lump sum payment of \$30,138.81, representing compensation for past unreimbursable expenses, payable to Kevin Tock and Tracy Tock, petitioners;

C. A lump sum payment of \$46,357.53, representing compensation for satisfaction of the State of Wisconsin Medicaid lien, payable jointly to petitioners and

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Petitioners agree to endorse this payment to the State of Wisconsin.

D. An amount sufficient to purchase the annuity contract,<sup>2</sup> subject to the conditions described below, that will provide payments for the life care items contained in the life care plan, as illustrated by the chart at Tab A attached hereto, paid to the life insurance company<sup>3</sup> from which the annuity will be purchased.<sup>4</sup> Compensation for Year Two (beginning on the first anniversary of the date of judgment) and all subsequent years shall be provided through respondent's purchase of an annuity, which annuity shall make payments directly to Attorney Gregory A. Kotsonis as guardian of the estate of Bryce Tock, for the benefit of Bryce Tock, only so long as Bryce Tock is alive at the time a particular payment is due. At the Secretary's sole discretion, the periodic payments may be provided in monthly, quarterly, annual or other installments. The "annual amounts" set forth in the chart at Tab A describe only the total yearly sum to be paid to petitioners and do not require that the payment be made in one annual installment.

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<sup>2</sup> In respondent's discretion, respondent may purchase one or more annuity contracts from one or more life insurance companies.

<sup>3</sup> The Life Insurance Company must have a minimum of \$250,000,000 capital and surplus, exclusive of any mandatory security valuation reserve. The Life Insurance Company must have one of the following ratings from two of the following rating organizations:

- a. A.M. Best Company: A++, A+, A+g, A+p, A+r, or A+s;
- b. Moody's Investor Service Claims Paying Rating: Aa3, Aa2, Aa1, or Aaa;
- c. Standard and Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+, or AAA;
- d. Fitch Credit Rating Company, Insurance Company Claims Paying Ability Rating: AA-, AA, AA+, or AAA.

<sup>4</sup> Petitioners authorize the disclosure of certain documents filed by the petitioners 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.

1. Growth Rate

Respondent proffers that a four percent (4%) growth rate should be applied to all non-medical life care items, and a five percent (5%) growth rate should be applied to all medical life care items. Thus, the benefits illustrated in the chart at Tab A that are to be paid through annuity payments should grow as follows: four percent (4%) compounded annually from the date of judgment for non-medical items, and five percent (5%) compounded annually from the date of judgment for medical items. Petitioners agree.

2. Life-contingent annuity

The guardian of Bryce Tock's estate will continue to receive the annuity payments from the Life Insurance Company only so long as Bryce Tock is alive at the time that a particular payment is due. Written notice shall be provided to the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of Bryce Tock's death.

3. Guardianship

On December 7, 2012, Petitioner's filed Letters of Guardianship of the Estate of a Minor, reflecting that Attorney Gregory A. Kotsonis, 411 E. Wisconsin Ave., Suite 700, Milwaukee, Wisconsin, 53202, was appointed guardian of the estate of Bryce Tock on January 22, 2010. If Mr. Kotsonis is not authorized by a court of competent jurisdiction to serve as guardian of the estate of Bryce Tock at the time that a particular payment is due, any such payment shall be made to the party or parties appointed by a court of competent jurisdiction to serve as guardian(s)/conservator(s) of the estate of Bryce Tock upon submission of written documentation of such appointment to the Secretary.

**III. Summary of Recommended Payments Following Judgment**

- |    |   |                |
|----|---|----------------|
| A. | Lump Sum paid to Attorney Gregory A. Kotsonis as guardian of Bryce Tock's estate:       | \$1,146,757.71 |
| B. | Lump sum paid to petitioners:   | \$ 30,138.81   |
| C. | Medicaid Lien:  | \$ 46,357.53   |
| D. | An amount sufficient to purchase the annuity contract described above in section II. D. |                |

Respectfully submitted,

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Dated: December 14, 2012