

The parties agree that compensation beyond the first year post-judgment (beginning on the first anniversary of the date of judgment) and all subsequent years shall be paid in the form of an annuity. As provided in the Proffer, respondent shall purchase, and take ownership of, as soon as practicable after entry of judgment, an annuity contract that will provide payments for the life care items contained in the life care plan, as attached in the Proffer, Tab A, paid to the life insurance company⁴ from which the annuity will be purchased. See Proffer at 3, ¶ II(C); Proffer at 5, ¶ III(C); see also § 300aa-15(a)(1)(A). The annuity payments shall be payable directly to petitioner, Jean Lydon, only so long as Jean Lydon is alive at the time a particular payment is due. See Proffer at 4, ¶ II(C)(2). As provided in the Proffer, the annuity contract shall provide for a 4% growth rate for all non-medical life care items listed in Proffer, Tab A. See Proffer at 4, ¶ II(C)(1). As provided in the Proffer, the annuity contract shall provide for a 5% growth rate for all medical life care items listed in Proffer, Tab A. See Proffer at 4, ¶ III(C)(1). As provided in the Proffer, the growth rate shall be applied and compounded beginning on the date of judgment. Id.

Based upon the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in the Proffer. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court **SHALL ENTER JUDGMENT** in accordance with the terms of the parties' Proffer.⁵

IT IS SO ORDERED.


PATRICIA E. CAMPBELL-SMITH
Special Master

⁴ The annuity contract shall be purchased from an insurance company that meets the following criteria, adapted from the Proffer; these criteria appear to be based upon the December 1990 draft of the Uniform Periodic Payment of Judgments Act.

- 1) has a minimum of \$250,000,000 of capital and surplus, exclusive of any mandatory security valuation reserve; and
- 2) has 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 Investors 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.

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

B. Lost Earnings

The parties agree that based upon the evidence of record, petitioner has suffered a loss of earnings related to her vaccine injury. Therefore, respondent proffers that Jean Lydon should be awarded \$57,233.83, as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(3)(A).

Petitioner agrees.

C. Pain and Suffering

Respondent proffers that petitioner should be awarded \$241,622.37 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). Petitioner agrees.

D. Past Unreimbursable Expenses

Evidence supplied by petitioner documents her expenditure of past unreimbursable expenses related to her vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$11,043.02. Petitioner agrees.

E. Medicaid Lien

Respondent proffers that petitioner should be awarded funds to satisfy the State of Iowa Medicaid lien in the amount of \$12,574.74, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of Iowa may have against any individual as a result of any Medicaid payments the State of Iowa has made to or on behalf of Jean Lydon from the date of her eligibility for benefits through the date of judgment in this case as a result of her vaccine-related injury suffered on or about January 1, 2001, under Title XIX of the Social Security Act.

II. Form of the Award

The parties recommend that the compensation provided to petitioner 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 \$442,188.42, representing life care expenses for Year One (\$132,289.20), lost earnings (\$57,233.83), pain and suffering (\$241,622.37), and past unreimbursable expenses (\$11,043.02), in the form of a check payable to Jean Lydon, petitioner;

B. A lump sum payment of \$12,574.74, representing compensation for satisfaction of the State of Iowa Medicaid lien, payable jointly to petitioner and

Iowa Lien Recovery Unit
P.O. Box 36446
Des Moines, IA 50315
Att: Carrie Kleis

Petitioner agrees to endorse this payment to the State.

C. An amount sufficient to purchase an annuity contract, 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 company² from

² 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.

which the annuity will be purchased. 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 petitioner, Jean Lydon, only so long as petitioner is alive at the time a particular payment is due. At the Secretary's sole discretion, the periodic payments may be provided to petitioner 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 petitioner and do not require that the payment be made in one annual installment.

1. Growth Rate

Respondent proffers that a four percent (4%) growth rate should be applied to all non-medical life care items, and a six percent (6%) growth rate should be applied to all medical life care items, except for LPN and psychologist for which a five percent (5%) growth rate should be applied. However, projected expenses for LPN and psychologist are offset at 100%, as illustrated in the chart at Tab A. 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 six percent (6%) compounded annually from the date of judgment for medical items. Petitioner agrees.

2. Life-contingent annuity

Petitioner will continue to receive the annuity payments from the Life Insurance Company only so long as she is alive at the time that a particular payment is due. Petitioner agrees to make arrangements to ensure that representatives of her estate provide written notice to

the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of her death.

3. Guardianship

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

III. Summary of Recommended Payments Following Judgment

- | | | |
|----|---|---------------|
| A. | Lump Sum paid to petitioner: | \$ 442,188.42 |
| B. | Reimbursement for Medicaid lien: | \$ 12,574.74 |
| C. | An amount sufficient to purchase the annuity contract described above in section II. C. | |

Respectfully submitted,

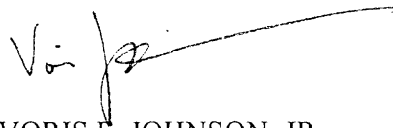
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Dated: September 12, 2008

Appendix A: Items of Compensation for Jean Lydon

ITEMS OF COMPENSATION	G.R.	*	M	Lump Sum	Compensation	Compensation	Compensation	Compensation	Compensation	Compensation	Compensation
				Compensation	Year 1	Year 2	Years 3-4	Year 5	Years 6-7	Years 8-9	Year 10
				2008	2009	2010-2011	2012	2013-2014	2015-2016	2017	2018
Medigap F	6%		M	4,658.40	4,658.40	4,658.40	4,658.40	4,658.40	4,658.40	4,658.40	4,658.40
LPN	5%	*									
Attendant Care	4%		M	57,261.20	57,261.20	57,261.20	57,261.20	57,261.20	57,261.20	57,261.20	57,261.20
Set up Fee/ Mngt Fee	4%			50.00	35.00	35.00	35.00	35.00	35.00	35.00	35.00
Case Management	4%			4,000.00	2,400.00	600.00	600.00	600.00			
Mileage for Case Management	4%			140.00	70.00	35.00	35.00	35.00			
Hand Held Shower Spray	4%			9.00	9.00	9.00	9.00	9.00	9.00	9.00	9.00
Easy Lift Recliner	4%			1,000.00							1,000.00
Wheelchair	4%	*									
Maintenance for Wheelchair	4%			125.00	125.00	125.00	125.00	125.00	125.00	125.00	125.00
Motorized Wheelchair	4%						7,177.50			7,177.50	
Maint. for Motorized Wheelchair	4%							166.67	166.67	166.67	166.67
Bilateral AFOs	4%	*									
Hospital Bed	4%	*									
Lifeline System	4%	*									
Primary Care Physician	6%	*									
Psychologist	5%	*									
Dialysis Care	6%	*									
Follow-up at Mayo Clinic	6%	*									
Hospital & ER	6%	*									
PT	4%	*									
Modified Van	4%			15,000.00							15,000.00
Cost of Van	4%			23,000.00							24,650.00
Handicapped Home Mods	0%			10,000.00							
Lift from Ground Level to Deck	0%			15,069.00							
Cement Pad, Wall & Outlet for Lift	0%			1,000.00							
Maintenance for Lift and Ramp	4%			100.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00
Lift Motor Replacement	4%										
Gabapentin 100 mgs	6%			311.40	311.40	311.40	311.40	311.40	311.40	311.40	311.40
Gabapentin 300mgs	6%			442.80	442.80	442.80	442.80	442.80	442.80	442.80	442.80
Fluoxetine	6%			122.40	122.40	122.40	122.40	122.40	122.40	122.40	122.40
Lost Earnings				57,233.83							

Appendix A: Items of Compensation for Jean Lydon

ITEMS OF COMPENSATION	G	R	*	M	Lump Sum Compensation Year 1 2008	Compensation Year 2 2009	Compensation Years 3-4 2010-2011	Compensation Year 5 2012	Compensation Years 6-7 2013-2014	Compensation Years 8-9 2015-2016	Compensation Year 10 2017	Compensation Year 11 2018
Pain and Suffering					241,622.37							
Past Unreimbursable Expenses					11,043.02							
Medicaid Lien Reimbursement					12,574.74							
Annual Totals					454,763.16	65,635.20	63,800.20	70,977.70	63,966.87	63,331.87	70,509.37	103,981.87

Note. Compensation Year 1 consists of the 12 month period following the date of judgment
 Compensation Year 2 consists of the 12 month period commencing on the first anniversary of the date of judgment.
 As soon as practicable after entry of judgment, respondent shall make the following payment to petitioner for Yr 1 life care expenses (\$132,289.20), lost earnings (\$57,233.83), pain and suffering (\$241,622.37), and past unreimbursable expenses (\$11,043.02): \$442,188.42
 As soon as practicable after entry of judgment, respondent shall make the following payment jointly to petitioner and the Iowa Lien Recovery Unit, as reimbursement of the state's Medicaid lien: \$12,574.74
 Annual amounts payable through an annuity for future Compensation Years follow the anniversary of the date of judgment.
 Annual amounts shall increase at the rates indicated above in column G R . compounded annually from the date of judgment
 Items denoted with an asterisk (*) covered by health insurance and/or Medicare
 Items denoted with an "M" payable in twelve monthly installments totaling the annual amount indicated

Appendix A: Items of Compensation for Jean Lydon

ITEMS OF COMPENSATION	G R	*	M	Compensation Years 12-14 2019-2021	Compensation Year 15 2022	Compensation Year 16 2023	Compensation Years 17-Life 2024-Life
Medigap F	6%		M	4,658.40	4,658.40	4,658.40	4,658.40
LPN	5%	*					
Attendant Care	4%		M	57,261.20	57,261.20	57,261.20	57,261.20
Set up Fee/ Mngt Fee	4%			35.00	35.00	35.00	35.00
Case Management	4%						
Mileage for Case Management	4%						
Hand Held Shower Spray	4%			9.00	9.00	9.00	9.00
Easy Lift Recliner	4%			100.00	100.00	100.00	100.00
Wheelchair	4%	*					
Maintenance for Wheelchair	4%			125.00	125.00	125.00	125.00
Motorized Wheelchair	4%				7,177.50	1,435.50	1,435.50
Maint for Motorized Wheelchair	4%			166.67	166.67	166.67	166.67
Bilateral AFOs	4%	*					
Hospital Bed	4%	*					
Lifeline System	4%	*					
Primary Care Physician	6%	*					
Psychologist	5%	*					
Dialysis Care	6%	*					
Follow-up at Mayo Clinic	6%	*					
Hospital & ER	6%	*					
PT	4%	*					
Modified Van	4%			1,500.00	1,500.00	1,500.00	1,500.00
Cost of Van	4%			2,456.00	2,456.00	2,456.00	2,456.00
Handicapped Home Mods	0%						
Lift from Ground Level to Deck	0%						
Cement Pad, Wall & Outlet for Lift	0%						
Maintenance for Lift and Ramp	4%			200.00	200.00	200.00	200.00
Lift Motor Replacement	4%					1,000.00	66.67
Gabapentin 100 mgs	6%			311.40	311.40	311.40	311.40
Gabapentin 300mgs	6%			442.80	442.80	442.80	442.80
Fluoxetine	6%			122.40	122.40	122.40	122.40
Lost Earnings							

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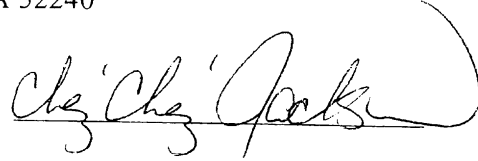
ITEMS OF COMPENSATION	G.R.	*	M	Compensation	Compensation	Compensation	Compensation
				Years 12-14	Year 15	Year 16	Years 17-Life
				2019-2021	2022	2023	2024-Life
Pain and Suffering							
Past Unreimbursable Expenses							
Medicaid Lien Reimbursement							
Annual Totals				67,387.87	74,565.37	69,823.37	68,890.04

Note. Compensation Year 1 consists of the 12 month period following the date of judgment.
 Compensation Year 2 consists of the 12 month period commencing on the first anniversary of the date of judgment.
 As soon as practicable after entry of judgment, respondent shall make the following payment to petitioner for Yr 1 life care expenses (\$132,289.20), lost earnings (\$57,233.83), pain and suffering (\$241,622.37), and past unreimbursable expenses (\$11,043.02): \$442,188.42
 As soon as practicable after entry of judgment, respondent shall make the following payment jointly to petitioner and the Iowa Lien Recovery Unit, as reimbursement of the state's Medicaid lien: \$12,574.74.
 Annual amounts payable through an annuity for future Compensation Years follow the anniversary of the date of judgment.
 Annual amounts shall increase at the rates indicated above in column G.R., compounded annually from the date of judgment.
 Items denoted with an asterisk (*) covered by health insurance and/or Medicare.
 Items denoted with an "M" payable in twelve monthly installments totaling the annual amount indicated.

CERTIFICATE OF SERVICE

I certify that on this 12th day of September, 2008, a copy of RESPONDENT'S PROFFER
ON AWARD OF COMPENSATION was served, by first-class mail, postage pre-paid, upon:

Martin A. Diaz, Esq.
Martin Diaz Law Firm
528 South Clinton Street
Iowa City, IA 52240

A handwritten signature in cursive script, appearing to read "Chey Chey Spinks", written over a horizontal line.