

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 09-195V

Filed: December 5, 2012

Not for Publication

MILICA STIJEPOVIC and FROLIAN *

INIGUEZ, legal representatives of a minor *

child, MILIANA INIGUEZ, *

Petitioners, *

v. *

SECRETARY OF HEALTH *

AND HUMAN SERVICES, *

Respondent. *

Armond Marcarian, Westlake Village, CA, for petitioners.

Ann D. Martin, Washington, DC, for respondent.

Damages decision based on stipulation; Measles-Mumps-Rubella vaccine; pneumococcal conjugate vaccine; varicella vaccine; encephalopathy

MILLMAN, Special Master

DECISION AWARDING DAMAGES¹

On December 5, 2012, the parties filed the attached stipulation in which they agreed to settle this case and described the settlement terms. Petitioners allege that Miliana sustained the first symptom or manifestation of the onset of an encephalopathy within the time period set forth in the Table as a result of her April 5, 2006 receipt of Measles-Mumps-Rubella (“MMR”) vaccine, pneumococcal conjugate (“PCV”) vaccine, and/or the varicella vaccine. Petitioners allege Miliana suffered significant neurologic and physical impairments as sequelae

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would constitute a clearly unwarranted invasion of privacy. When such a decision is filed, petitioner has 14 days to identify and move to redact such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall redact such material from public access.

of her Table injury. Petitioners further allege that Miliana experienced the residual effects of this injury for more than six months. In the alternative, petitioners allege that Miliana's encephalopathy was caused in fact by her vaccines. Respondent denies that Miliana suffered the onset of an encephalopathy within the time period set forth in the Table; denies that she sustained neurologic and physical impairments as sequelae of a Table injury; denies that she suffered an encephalopathy, or any other injury, that was caused in fact by her vaccines; and denies that Miliana experienced the residual effects of any vaccine-related injury for more than six months. Nonetheless, the parties agreed to resolve this matter informally.

The court finds the terms to be reasonable, hereby adopts the parties' stipulation, and awards compensation in the amount and on the terms set forth therein. Pursuant to the stipulation, the court awards:

- a. a lump sum of **\$753,879.31**, which amount represents compensation for the first year life care expenses (\$521,722.75) and trust seed funds (\$232,156.56). The award shall be in the form of a check made payable to Regions Bank, as trustee of the grantor reversionary trust established for the benefit of Miliana Iniguez;
- b. a lump sum of **\$662,591.70**, which amount represents compensation for partial lost future earnings (\$381,482.48), pain and suffering (\$236,109.22), and home modification expenses (\$45,000.00). The award shall be in the form of a check made payable to petitioners as guardian(s)/conservator(s) of the estate of Miliana Iniguez for the benefit of Miliana Iniguez. No payments shall be made until petitioners provide respondent with documentation establishing that they have been appointed as the guardian(s)/conservator(s) of Miliana Iniguez's estate;
- c. a lump sum of **\$6,860.16**, which amount represents compensation for past unreimbursable expenses. The award shall be in the form of a check made payable to petitioners, Milica Stijepovic and Frolian Iniguez;
- d. a lump sum of **\$681,755.02**, which amount represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of California may have against any individual as a result of Medicaid payments the State of California has made to or on behalf of Miliana Iniguez from the date of her eligibility for benefits through the date of judgment in this case as a result of her alleged vaccine-related injury suffered on or about April 5, 2006, under Title XIX of the Social Security Act. The award shall be in the form of a check made payable jointly to petitioners and

State of California
Recovery Section, MS 4720
P.O. Box 997425

Sacramento, CA 95899-7425
Attn: Ms. Nicole Phillips

Petitioners agree to endorse this payment to the State of California; and

- e. an amount sufficient to purchase the annuity contract(s) subject to the conditions described in paragraph 10 of the attached stipulation. The award shall be paid to the life insurance company(ies) from which he annuity 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.²

IT IS SO ORDERED.

Dated: December 5, 2012

/s/ Laura D. Millman
Laura D. Millman
Special Master

² Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.

the alternative, petitioners allege that Miliana's encephalopathy was caused in fact by her vaccines.

5. Petitioners represent that there has been no prior award or settlement of a civil action for damages on behalf of Miliana as a result of her condition.

6. Respondent denies that Miliana suffered the onset of an encephalopathy within the time period set forth in the Table; denies that she sustained neurologic and physical impairments as sequelae of a Table injury; denies that she suffered an encephalopathy, or any other injury, that was caused in fact by her vaccines; and denies that Miliana experienced the residual effects of any vaccine-related injury for more than six months.

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 payments:

a. A lump sum of \$753,879.31, which amount represents compensation for first year life care expenses (\$521,722.75) and trust seed funds (\$232,156.56), in the form of a check payable to Regions Bank, as trustee of the grantor reversionary trust established for the benefit of Miliana Iniguez.

b. A lump sum of \$662,591.70, which amount represents compensation for partial lost future earnings (\$381,482.48), pain and suffering (\$236,109.22), and home modification expenses (\$45,000.00) in the form of a check payable to petitioners as guardian(s)/conservator(s) of the estate of Miliana Iniguez for the benefit of Miliana Iniguez. No payments shall be made until petitioners provide respondent with documentation establishing that they have been appointed as the guardian(s)/conservator(s) of Miliana Iniguez's estate.

c. A lump sum of \$6,860.16, which amount represents compensation for past unreimbursable expenses, in the form of a check payable to petitioners, Milica Stijepovic and Frolian Iniguez.

d. A lump sum of \$681,755.02, which amount represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of California may have against any individual as a result of any Medicaid payments the State of California has made to or on behalf of Miliana Iniguez from the date of her eligibility for benefits through the date of judgment in this case as a result of her alleged vaccine-related injury suffered on or about April 5, 2006, under Title XIX of the Social Security Act, in the form of a check payable jointly to petitioners and

State of California
Recovery Section, MS 4720
P.O. Box 997425
Sacramento, CA 95899-7425
Attn: Ms. Nicole Phillips

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

e. An amount sufficient to purchase the annuity contract(s) described in paragraph 10 below, paid to the life insurance company(ies) from which the annuity will be purchased (the "Life Insurance Company(ies)").

9. The Life Insurance Company(ies) must have a minimum of \$250,000,000 capital and surplus, exclusive of any mandatory security valuation reserve. The Life Insurance Company(ies) 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.

10. The Secretary of Health and Human Services agrees to purchase an annuity contract(s) from the Life Insurance Company(ies) for the benefit of Miliana, pursuant to which

the Life Insurance Company(ies) will agree to make payments periodically to the trustee for the following items of compensation:

- a. For future unreimbursable Pre-Existing Condition Insurance Plan (PCIP) Premium and Maximum Out of Pocket (MOP) expenses, on the first anniversary of the date of judgment, a lump sum of \$3,820.00, increasing at the rate of five percent (5%), compounded annually from the date of judgment.
- b. For future unreimbursable Major Risk Medical Insurance Program (MRMIP) Premium and MOP expenses, beginning on the anniversary of the date of judgment in year 2014, an annual amount of \$7,012.00 to be paid up to the anniversary of the date of judgment in year 2020; then, beginning on the anniversary of the date of judgment in year 2020, an annual amount of \$8,392.00 to be paid up to the anniversary of the date of judgment in year 2024, all amounts increasing at the rate of five percent (5%), compounded annually from the date of judgment.
- c. For future unreimbursable Medicare Part B Premium, Medicare Part D Deductible, Medicare Part D Rx Premiums, and Medicare Part D expenses, beginning on the anniversary of the date of judgment in year 2043, an annual amount of \$6,941.06 to be paid for the remainder of Miliana's life, increasing at the rate of five percent (5%), compounded annually from the date of judgment.
- d. For future unreimbursable Medigap F Premium expenses, beginning on the anniversary of the date of judgment in year 2043, an annual amount of \$3,774.96 to be paid up to the anniversary of the date of judgment in year 2070; thereafter, beginning on the anniversary of the date of judgment in year 2070, an annual amount of \$1,848.00 to be paid for the remainder of Miliana's life, all amounts increasing at the rate of five percent (5%), compounded annually from the date of judgment.
- e. For future unreimbursable Primary Care expenses, beginning on the anniversary of the date of judgment in year 2014, an annual amount of \$1,035.00 to be paid up to the anniversary of the date of judgment in year 2028; then, beginning on the anniversary of the date of judgment in year 2028, an annual amount of \$2,070.00 to be paid up to the anniversary of the date of judgment in year 2043, all amounts increasing at the rate of five percent (5%), compounded annually from the date of judgment.
- f. For future unreimbursable Team Conference expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$400.00 to be paid up to the anniversary of the date of judgment in year 2028, increasing at the rate of five percent (5%), compounded annually from the date of judgment.
- g. For future unreimbursable Neurology, Urology, Pulmonology, Gastroenterology, Follow up for VNS, Venipuncture, CBC, Professional Fee CBC, CMP, Liver

Function Panel, Blood Cultures, Professional Fee Blood Cultures, Respiratory Cultures, Professional Fee for Respiratory Cultures, Urinalysis, Professional Fee Urinalysis, and Urine Culture expenses beginning on the anniversary of the date of judgment in year 2014, an annual amount of \$10,688.67 to be paid up to the anniversary of the date of judgment in year 2043, increasing at the rate of five percent (5%), compounded annually from the date of judgment.

- h. For future unreimbursable Ophthalmology and Orthopaedic follow up expenses, beginning on the anniversary of the date of judgment in year 2014, an annual amount of \$993.33 to be paid up to the anniversary of the date of judgment in year 2024, increasing at the rate of five percent (5%), compounded annually from the date of judgment.
- i. For future unreimbursable Neuromuscular Clinic expenses, beginning on the anniversary of the date of judgment in year 2014, an annual amount of \$690.00 to be paid up to the anniversary of the date of judgment in year 2016, increasing at the rate of five percent (5%), compounded annually from the date of judgment.
- j. For future unreimbursable Anesthesia for Dental Exams, Diastat, Clonazepam, Cipro & Amox/Clav, and Robinul expenses, beginning on the anniversary of the date of judgment in year 2014, an annual amount of \$3,126.36 to be paid for the remainder of Miliana's life, increasing at the rate of five percent (5%), compounded annually from the date of judgment.
- k. For future unreimbursable Case Management, PT Evaluation, Disinfectant, Wipes, and Glove expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$2,226.54 to be paid up to the anniversary of the date of judgment in year 2028; then, beginning on the anniversary of the date of judgment in year 2028, an annual amount of \$570.00 to be paid for the remainder of Miliana's life, all amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment.
- l. For future unreimbursable Additional Case Management expenses, beginning on the anniversary of the date of judgment in year 2015, an annual amount of \$475.00 to be paid up to the anniversary of the date of judgment in year 2018, increasing at the rate of four percent (4%), compounded annually from the date of judgment.
- m. For future unreimbursable Licensed Visiting Nurse (LVN), Attendant Care for Night, and Registered Nurse (RN) expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$267,559.46 to be paid up to the anniversary of the date of judgment in year 2021, increasing at the rate of four percent (4%), compounded annually from the date of judgment.
- n. For future unreimbursable Licensed Practical Nurse (LPN) expenses, beginning on the anniversary of the date of judgment in year 2021, an annual amount of

\$326,400.00 to be paid up to the anniversary of the date of judgment in year 2028, all amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment.

- o. For future unreimbursable ICF-DDN Small Group Home expenses, beginning on the anniversary of the date of judgment in year 2031, an annual amount of \$77,385.52 to be paid for the remainder of Miliana's life, all amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment.
- p. For future unreimbursable Dietician, OT Evaluation, Micropore Tape, Saline Ampoules, and Suction Catheter Kit expenses, beginning on the anniversary of the date of judgment in year 2014, an annual amount of \$3,329.88 to be paid up to the anniversary of the date of judgment in year 2028; then, beginning on the anniversary of the date of judgment in year 2028, an annual amount of \$1,267.20 to be paid up to the anniversary of the date of judgment in year 2043, all amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment.
- q. For future unreimbursable PT expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$4,800.00 to be paid up to the anniversary of the date of judgment in year 2019; then, beginning on the anniversary of the date of judgment in year 2019, an annual amount of \$2,400.00 to be paid up to the anniversary of the date of judgment in year 2028; thereafter beginning on the anniversary of the date of judgment in year 2028, an annual amount of \$1,800.00 to be paid for the remainder of Miliana's life, all amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment.
- r. For future unreimbursable OT, ST Evaluation and ST expenses, beginning on the anniversary of the date of judgment in year 2014, an annual amount of \$6,500.00 to be paid up to the anniversary of the date of judgment in year 2018, increasing at the rate of four percent (4%), compounded annually from the date of judgment.
- s. For future unreimbursable MRI, EEG, VCUg, Swallow Study, Sleep Study, VNS: Facility Fee, Physician Fee & Anesthesia, Hip Surgery, and Spine Surgery expenses, on the anniversary of the date of judgment in year 2014, a lump sum of \$4,856.00; then, on the anniversary of the date of judgment in year 2015, a lump sum of \$1,417.34; then, on the anniversary of the date of judgment in year 2016, a lump sum of \$40,645.50; then, on the anniversary of the date of judgment in year 2017, a lump sum of \$161,139.20; then, on the anniversary of the date of judgment in year 2018, a lump sum of \$26,515.12; then, on the anniversary of the date of judgment in year 2020, a lump sum of \$2,576.00; then, on the anniversary of the date of judgment in year 2021, a lump sum of \$1,417.34; then, on the anniversary of the date of judgment in year 2022, a lump sum of \$3,481.00; then, on the anniversary of the date of judgment in year 2024, a lump sum of \$26,515.12; then, on the anniversary of the date of judgment in year 2026, a lump sum of \$2,576.00; then, on the anniversary of the date of judgment in year 2027, a lump sum of \$2,322.34; then, on the anniversary

of the date of judgment in year 2028, a lump sum of \$2,576.00; then, on the anniversary of the date of judgment in year 2030, a lump sum of \$26,515.12; then, on the anniversary of the date of judgment in year 2031, a lump sum of \$3,781.88; then, on the anniversary of the date of judgment in year 2032, a lump sum of \$3,481.00; then, on the anniversary of the date of judgment in year 2033, a lump sum of \$1,417.34; then, on the anniversary of the date of judgment in year 2034, a lump sum of \$2,576.00; then, on the anniversary of the date of judgment in year 2036, a lump sum of \$26,515.12; then, on the anniversary of the date of judgment in year 2037, a lump sum of \$905.00; then, on the anniversary of the date of judgment in year 2038, a lump sum of \$2,576.00; then, on the anniversary of the date of judgment in year 2039, a lump sum of \$1,417.34; then, on the anniversary of the date of judgment in year 2040, a lump sum of \$2,576.00; then, on the anniversary of the date of judgment in year 2042, a lump sum of \$27,420.12, all amounts increasing at the rate of five percent (5%), compounded annually from the date of judgment.

- t. For future unreimbursable Professional Fee Urine Culture, Ultrasound of Bladder, Chest X-rays, X-ray of Abdomen, Banzel, Keppra, Vimpat, Tobramycin, Cleocin, Albuterol, Pulmicort, Atrovent, Cephalexin, Physician Fees, Physician Consult Fees, ER Visit & Related MD after Trach, and Stimulator Analysis expenses, beginning on the anniversary of the date of judgment in year 2014, an annual amount of \$41,189.53 to be paid up to the anniversary of the date of judgment in year 2043, increasing at the rate of five percent (5%), compounded annually from the date of judgment.
- u. For future unreimbursable Hip and Spine X-ray expenses, beginning on the anniversary of the date of judgment in year 2014, an annual amount of \$500.00 to be paid up to the anniversary of the date of judgment in year 2017, increasing at the rate of five percent (5%), compounded annually from the date of judgment.
- v. For future unreimbursable Additional Hip X-ray expenses, beginning on the anniversary of the date of judgment in year 2014, an annual amount of \$189.00 to be paid up to the anniversary of the date of judgment in year 2016, increasing at the rate of five percent (5%), compounded annually from the date of judgment.
- w. For future unreimbursable Frisium expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$1,504.00 to be paid for the remainder of Miliana's life, increasing at the rate of five percent (5%), compounded annually from the date of judgment.
- x. For future unreimbursable Miralax expenses, beginning on the anniversary of the date of judgment in year 2014, an annual amount of \$245.39 to be paid for the remainder of Miliana's life, increasing at the rate of four percent (4%), compounded annually from the date of judgment.
- y. For future unreimbursable Dulcolax Suppositories, Benefiber, Fleets Enema, Diapers, Diapers: Nighttime, Peri Wash, and Blue Pad expenses, beginning on the first

anniversary of the date of judgment, an annual amount of \$1,727.04 to be paid for the remainder of Miliana's life, increasing at the rate of four percent (4%), compounded annually from the date of judgment.

- z. For future unreimbursable Stander expenses, on the anniversary of the date of judgment in year 2015, a lump sum of \$3,530.00; then, on the anniversary of the date of judgment in year 2018, a lump sum of \$3,530.00; then, on the anniversary of the date of judgment in year 2021, a lump sum of \$3,530.00; then, on the anniversary of the date of judgment in year 2028, a lump sum of \$3,530.00; thereafter beginning on the anniversary of the date of judgment in year 2029, an annual amount of \$504.29 to be paid for the remainder of Miliana's life, all amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment.
- aa. For future unreimbursable Wheelchair, Custom Wheelchair Seating, Portable Ramp, Hospital Bed, Railing, Hoyer Lift, Lift Slings, Bath Chair, Rolling Shower Chair, Hand Held Shower, Compression Nebulizer, O2 Concentrator, Suction Machine, Portable Suction Machine, Ambu Bag, Pulse Oximeter, and Pulse Oximeter Multi-site Sensor expenses, on the anniversary of the date of judgment in year 2014, a lump sum of \$8,714.42; then, on the anniversary of the date of judgment in year 2015, a lump sum of \$2,847.00; then, on the anniversary of the date of judgment in year 2016, a lump sum of \$5,724.77; then, on the anniversary of the date of judgment in year 2017, a lump sum of \$3,956.85; then, on the anniversary of the date of judgment in year 2018, a lump sum of \$7,993.49; then, on the anniversary of the date of judgment in year 2019, a lump sum of \$155.00; then, on the anniversary of the date of judgment in year 2020, a lump sum of \$7,336.79; then, on the anniversary of the date of judgment in year 2021, a lump sum of \$2,325.00; then, on the anniversary of the date of judgment in year 2022, a lump sum of \$9,625.34; then, on the anniversary of the date of judgment in year 2024, a lump sum of \$2,690.90; then, on the anniversary of the date of judgment in year 2026, a lump sum of \$472.55; then, on the anniversary of the date of judgment in year 2027, a lump sum of \$11,632.79; then, on the anniversary of the date of judgment in year 2030, a lump sum of \$2,325.00; then, on the anniversary of the date of judgment in year 2032, a lump sum of \$7,808.79; then, on the anniversary of the date of judgment in year 2033, a lump sum of \$2,325.00; then, on the anniversary of the date of judgment in year 2036, a lump sum of \$2,325.00; then, on the anniversary of the date of judgment in year 2037, a lump sum of \$7,808.79; then, on the anniversary of the date of judgment in year 2039, a lump sum of \$2,325.00; then, on the anniversary of the date of judgment in year 2042, a lump sum of \$10,133.79; all amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment.
- bb. For future unreimbursable Wheelchair Maintenance expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$200.00 to be paid up to the anniversary of the date of judgment in year 2021, increasing at the rate of four percent (4%), compounded annually from the date of judgment.

- cc. For future unreimbursable Hand Splint, Nebulizer Filter, Nebulizer Tubing & Med Dispenser, Mask w/ Tubing, Vacubrush Suction Adapter, Suction Tubing, Suction Canister, Yankauer Suction, Trach Tube, Trach Tie/ Holder, Trach Mask, Trach Kit, Saline Solution, and Feeding Bag expenses, beginning on the anniversary of the date of judgment in year 2014, an annual amount of \$5,594.93 to be paid up to the anniversary of the date of judgment in year 2043, increasing at the rate of four percent (4%), compounded annually from the date of judgment.

- dd. For future unreimbursable AFO expenses, beginning on the anniversary of the date of judgment in year 2014, an annual amount of \$2,000.00 to be paid up to the anniversary of the date of judgment in year 2025; then, on the anniversary of the date of judgment in year 2027, a lump sum of \$2,000.00; then, on the anniversary of the date of judgment in year 2030, a lump sum of \$2,000.00; then, on the anniversary of the date of judgment in year 2033, a lump sum of \$2,000.00; then, on the anniversary of the date of judgment in year 2036, a lump sum of \$2,000.00; then, on the anniversary of the date of judgment in year 2039, a lump sum of \$2,000.00; then, on the anniversary of the date of judgment in year 2042, a lump sum of \$2,000.00, all amounts increasing at the rate of four percent (4%), compounded annually from the date of judgment.

- ee. For future unreimbursable Ventilator and Trach Inner Cannula expenses, beginning on the anniversary of the date of judgment in year 2021, an annual amount of \$10,311.07 to be paid up to the anniversary of the date of judgment in year 2043, increasing at the rate of four percent (4%), compounded annually from the date of judgment.

- ff. For future unreimbursable Feeding Pump expenses, on the anniversary of the date of judgment in year 2021, a lump sum of \$1,477.03, increasing at the rate of four percent (4%), compounded annually from the date of judgment.

- gg. For future unreimbursable Mickey Tube, Mickey Extension Tubing, Syringe, Medical Syringe, and Urinary Catheter System expenses, beginning on the anniversary of the date of judgment in year 2014, an annual amount of \$9,998.12 to be paid up to the anniversary of the date of judgment in year 2043, increasing at the rate of four percent (4%), compounded annually from the date of judgment.

- hh. For future unreimbursable Pediasure expenses, beginning on the anniversary of the date of judgment in year 2014, an annual amount of \$3,267.24 to be paid up to the anniversary of the date of judgment in year 2019, increasing at the rate of four percent (4%), compounded annually from the date of judgment.

- ii. For future unreimbursable Ensure expenses, beginning on the anniversary of the date of judgment in year 2019, an annual amount of \$3,200.00 to be paid up to the anniversary of the date of judgment in year 2043, increasing at the rate of four percent

(4%), compounded annually from the date of judgment.

- jj. For future unreimbursable Hospitalization expenses, on the anniversary of the date of judgment in year 2014, a lump sum of \$100,639.92; then, on the anniversary of the date of judgment in year 2015, a lump sum of \$104,418.20; then, on the anniversary of the date of judgment in year 2016, a lump sum of \$107,982.63; then, on the anniversary of the date of judgment in year 2017, a lump sum of \$111,345.29; then, on the anniversary of the date of judgment in year 2018, a lump sum of \$114,517.61; then, on the anniversary of the date of judgment in year 2019, a lump sum of \$117,510.36; then, on the anniversary of the date of judgment in year 2020, a lump sum of \$120,333.72; then, on the anniversary of the date of judgment in year 2021, a lump sum of \$122,997.26; then, on the anniversary of the date of judgment in year 2022, a lump sum of \$125,510.04; then, on the anniversary of the date of judgment in year 2023, a lump sum of \$127,880.58; then, beginning on the anniversary of the date of judgment in year 2024, an annual amount of \$167,389.65 to be paid up to the anniversary of the date of judgment in year 2043, all amounts increasing at the rate of six percent (6%), compounded annually from the date of judgment.
- kk. For future unreimbursable Urgent Care expenses, beginning on the anniversary of the date of judgment in year 2014, an annual amount of \$2,160.00 to be paid up to the anniversary of the date of judgment in year 2028, increasing at the rate of five percent (5%), compounded annually from the date of judgment.
- ll. For future unreimbursable Van expenses, on the anniversary of the date of judgment in year 2021, a lump sum of \$34,314.60, increasing at the rate of four percent (4%), compounded annually from the date of judgment.
- mm. For future unreimbursable Van Modification expenses, on the anniversary of the date of judgment in year 2021, a lump sum of \$22,894.50, increasing at the rate of four percent (4%), compounded annually from the date of judgment.

At the sole discretion of the Secretary of Health and Human Services, the periodic payments may be provided to the trustee in monthly, quarterly, annual or other installments. The “annual amounts” set forth above describe only the total yearly sum to be paid to the trustee and do not require that the payment be made in one annual installment. The trustee will continue to receive the annuity payments from the Life Insurance Company(ies) only so long as Miliana is alive at the time that a particular payment is due. Written notice to the Secretary of Health and Human Services, the trustee, and the Life Insurance Company(ies) shall be provided within twenty (20)

days of Miliana's death.

11. The annuity contract(s) will be owned solely and exclusively by the Secretary of Health and Human Services and will be purchased as soon as practicable following the entry of a judgment in conformity with this Stipulation. The parties stipulate and agree that the Secretary of Health and Human Services and the United States of America are not responsible for the payment of any sums other than the amounts set forth in paragraph 8 herein and the amounts awarded pursuant to paragraph 12 herein, and that they do not guarantee or insure any of the future annuity payments. Upon the purchase of the annuity contract(s), the Secretary of Health and Human Services and the United States of America are released from any and all obligations with respect to future annuity payments.

12. 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.

13. Petitioners and their attorney represent that they have identified to respondent all known sources of payment for items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), including 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 entities that provide health services on a pre-paid basis.

14. Payments made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 12 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

15. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees, and litigation costs, and past unreimbursable expenses, the money provided pursuant to this Stipulation either immediately or as part of the annuity contract, will be used solely for the benefit of Miliana, as contemplated by a strict construction of 42 U.S.C. §300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

16. Petitioners represent that they presently are, or within 120 days of the date of judgment will become, duly authorized to serve as guardian(s)/conservator(s) of Miliana's estate under the laws of the State of California. No payments pursuant to this Stipulation shall be made until petitioners provide the Secretary with documentation establishing their appointment as guardian(s)/conservator(s) of Miliana's estate. If petitioners are not authorized by a court of competent jurisdiction to serve as guardian(s)/conservator(s) of the estate of Miliana Iniguez at the time a 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 guardian(s)/conservator(s) of the estate of Miliana Iniguez upon submission of written documentation of such appointment to the Secretary.

17. In return for the payments described in paragraphs 8 and 12, petitioners, in their individual capacities and as legal representatives of Miliana, on their own behalf, and on behalf of Miliana and her heirs, executors, administrators, successors or assigns, do 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 Miliana resulting from, or alleged to have resulted from the MMR and/or PCV and/or varicella vaccinations administered on April 5, 2006, as alleged by petitioners in a petition for vaccine compensation filed on or about April 1, 2009, in the United States Court of Federal Claims as petition No. 09-195V.

18. If Miliana should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

19. 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.

20. 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 12 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, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

21. Petitioners hereby authorize respondent to disclose documents filed by 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.

22. This Stipulation shall not be construed as an admission by the United States or the

Secretary of Health and Human Services that Miliana suffered the onset of an encephalopathy within the time period set forth in the Table; that her neurologic and physical impairments are the sequelae of a Table injury; that the vaccine was the cause in fact of encephalopathy and/or her current neurologic and physical impairments; or that Miliana experienced the residual effects of any vaccine-related injury for more than six months.

23. All rights and obligations of petitioners hereunder shall apply equally to petitioners' heirs, executors, administrators, successors, and/or assigns as legal representatives of Miliana Iniguez.

END OF STIPULATION

/

/

/

/

/

/

/

/

/

/

/

/

/

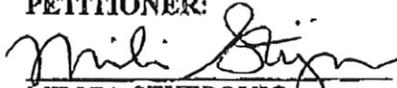
/

/

/

Respectfully submitted,

PETITIONER:


MILICA STJEPVIC

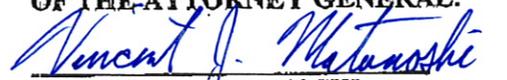
PETITIONER:


FROLAN INIGUEZ

ATTORNEY OF RECORD FOR
PETITIONERS:


ARMOND MARCARIAN, ESQ.
MARCARIAN LAW FIRM
31111 W. Agoura Road
Suite 260
Westlake Village, CA 91361
(818) 995-8787

AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:


VINCENT J. MATANOSKI
Acting Deputy Director
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146, Benjamin Franklin Station
Washington, DC 20044-0146

AUTHORIZED REPRESENTATIVE
OF THE SECRETARY OF HEALTH
AND HUMAN SERVICES:


VITO CASERTA, M.D., M.P.H.
Acting Director, Division of Vaccine
Injury Compensation (DVIC), Director,
Countermeasures Injury Compensation
Program (CICP)
Healthcare Systems Bureau, U.S. Dept.
of Health and Human Services
5600 Fishers Lane
Parklawn Building, Mail Stop 11C-26
Rockville, MD 20857

ATTORNEY OF RECORD FOR
RESPONDENT:


ANN D. MARTIN
Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146, Benjamin Franklin Station
Washington, DC 20044-0146
(202) 307-1815

Dated: December 5, 2012