

- A. A lump sum payment of **\$394,126.19**, representing life care expenses for Year One (\$7,980.34), lost earnings (\$183,621.08), pain and suffering (\$186,401.83), and past unreimbursable expenses (\$16,122.94), in the form of a check payable to Roseanne Borrero, petitioner; and
- B. 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 company from which the 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.

June 23, 2010
DATE

/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.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

ROSEANNE BORRERO,)	
)	<u>ECF</u>
Petitioner,)	
v.)	No. 01-417V
)	Special Master
SECRETARY OF HEALTH)	Laura D. Millman
AND HUMAN SERVICES,)	
)	
Respondent.)	

RESPONDENT'S PROFFER ON AWARD OF COMPENSATION

I. Items of Compensation

A. Life Care Items

The respondent engaged life care planner Suzanne Labansky, MSN, CRRN, CCM, CLCP, MSC, and petitioner engaged life care planner Maureen Clancy, RN, BSN, CLCP, to provide an estimation of Roseanne Borrero’s future vaccine injury-related needs. All items of compensation identified in the life care plan are supported by the evidence, and are illustrated by the chart entitled **Items of Compensation for Roseanne Borrero**, attached hereto as Tab A.¹ Respondent proffers that Roseanne Borrero should be awarded all items of compensation set forth in the life care plan and illustrated by the chart attached at Tab A. Petitioner agrees.

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 and that it is unlikely that she will be fully employed in the

¹The chart at Tab 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.

future. Therefore, respondent proffers that Roseanne Borrero should be awarded \$183,621.08 in lost earnings as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(3)(A). Petitioner agrees.

C. Pain and Suffering

Respondent proffers that Roseanne Borrero should be awarded \$186,401.83 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 \$16,122.94. Petitioner agrees.

E. Medicaid Lien

Petitioner represents that there are no Medicaid liens outstanding against her.

II. Form of the Award

The parties recommend that the compensation provided to Roseanne Borrero should be made through a combination of a lump sum payment 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 \$394,126.19, representing life care expenses for Year One (\$7,980.34), lost earnings (\$183,621.08), pain and suffering (\$186,401.83), and past unreimbursable expenses (\$16,122.94), in the form of a check payable to Roseanne Borrero, petitioner;

B. 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 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, Roseanne Borrero, only so long as Roseanne Borrero 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 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

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.

judgment for non-medical items, and five percent (5%) 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, Roseanne Borrero, is alive at the time that a particular payment is due. Petitioner agrees to make arrangements to ensure that written notice is provided to the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of Roseanne Borrero's 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: **\$ 394,126.19**
- B. An amount sufficient to purchase the annuity contract described above in section II. B.

Respectfully submitted,

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s/Lisa A. Watts
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Dated: June 21, 2010.

Appendix A: Items of Compensation for Roseanne Borrero

ITEMS OF COMPENSATION	G.R.	*	M	Lump Sum Compensation Year 1	Compensation Year 2	Compensation Year 3	Compensation Year 4	Compensation Year 5	Compensation Year 6	Compensation Year 7	Compensation Year 8	Compensation Year 9
				2010	2011	2012	2013	2014	2015	2016	2017	2018
Over the bed Table	4%											
Reacher	4%							36.34				
Adapt. Equip for Kitchen	4%							250.00				
Adapt. Grooming Equip	4%							150.00				
2 Sets Hospital Sheets	4%											
Adult Diapers	4%											
Bed Liners	4%											
Disposable Gloves	4%											
Wipes	4%											
Hand Sanitizer	4%											
YMCA	4%		M	812.00	712.00	712.00	712.00	712.00	712.00	712.00	712.00	712.00
Homemaker/Companion	4%		M	5,148.00	5,148.00	5,148.00	5,148.00	5,148.00	5,148.00	5,148.00	5,148.00	5,148.00
Home Maint	4%		M					2,688.00	2,688.00	2,688.00	2,688.00	2,688.00
Adapted Van	4%											
Home Mods: w/Acorn Lft	4%								71,484.00			
Second Floor Wheelchair	4%								329.00			
Lost Earnings				183,621.08								
Pain and Suffering				186,401.83								
Past Unreimbursable Exp.				16,122.94								
Annual Totals				394,126.19	9,724.31	9,883.85	9,689.85	18,621.24	84,599.85	12,939.80	12,707.34	13,098.26

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 (\$7,980.34), lost earnings (\$183,621.08), pain and suffering (\$186,401.83), and past unreimbursable expenses (\$16,122.94): \$394,126.19.
 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 Roseanne Borrero

ITEMS OF COMPENSATION	G.R.	*	M	Compensation Year 10	Compensation Year 11	Compensation Year 12	Compensation Year 13	Compensation Year 14	Compensation Year 15	Compensation Year 16	Compensation Year 17
				2019	2020	2021	2022	2023	2024	2025	2026
APWU Deductible	5%			275.00							
Current Rx Prescriptions	5%			96.00							
Future Medications	5%		M	2,400.00							
Medicare B Deductible	5%	*									
Medigap AARP Plan C	5%		M		1,758.00	1,758.00	1,758.00	1,758.00	1,758.00	1,758.00	1,758.00
AARP Medicare Rx	5%	*	M		6,337.77	6,337.77	6,337.77	6,337.77	6,337.77	6,337.77	6,337.77
Neurologist	5%	*		54.00							
Primary Care	5%	*		18.00							
Urologist	5%	*		18.00							
Pain Clinic	5%	*		18.00							
Acupuncture	5%	*		144.00							
Gastroenterologist	5%	*									
Neuropsychologist	5%	*									
Outpatient Rehab Evals	5%	*									
ER	5%	*									
Hospitalization	5%	*									
MRI Brain	5%	*		330.00							
MRI Spine	5%	*		300.00							
CBC	5%	*		8.00							
Metabolic Panel	5%	*		10.90							
Liver Function Panel	5%	*		10.47							
Urinalysis	5%	*		13.00							
Cystogram	5%	*									
Cysto-metrogram	5%	*									
X-rays	5%	*									
Ibuprofen	4%			98.48	98.48	98.48	98.48	98.48	98.48	98.48	98.48
PT	4%	*		12.00							
OT	4%	*		12.00						518.00	518.00
ST	4%	*		12.00							
RN Case Mngr	4%			2,136.00	1,068.00	1,068.00	1,068.00	1,068.00	1,068.00	1,068.00	1,068.00
Psychological Counseling	4%	*		180.00							

Appendix A: Items of Compensation for Roseanne Borrero

ITEMS OF COMPENSATION	G.R.	*	M	Compensation Year 10 2019	Compensation Year 11 2020	Compensation Year 12 2021	Compensation Year 13 2022	Compensation Year 14 2023	Compensation Year 15 2024	Compensation Year 16 2025	Compensation Year 17 2026
Over the bed Table	4%								109.00	15.57	15.57
Reacher	4%			36.34					36.34	7.27	7.27
Adapt. Equip for Kitchen	4%			250.00					250.00	50.00	50.00
Adapt. Grooming Equip	4%			150.00					150.00	30.00	30.00
2 Sets Hospital Sheets	4%								144.00	72.00	72.00
Adult Diapers	4%								787.00	787.00	787.00
Bed Liners	4%								821.00	821.00	821.00
Disposable Gloves	4%								876.00	876.00	876.00
Wipes	4%								281.05	281.05	281.05
Hand Sanitizer	4%								47.88	47.88	47.88
YMCA	4%		M	712.00	616.00	616.00	616.00	616.00			
Homemaker/Companion	4%		M	10,920.00	10,920.00	10,920.00	10,920.00	10,920.00	25,550.00	25,550.00	25,550.00
Home Maint	4%		M	2,688.00	2,688.00	2,688.00	2,688.00	2,688.00			
Adapted Van	4%								46,500.00		
Home Mods: w/Acorn Lft	4%										
Second Floor Wheelchair	4%									329.00	32.90
Lost Earnings											
Pain and Suffering											
Past Unreimbursable Exp.											
Annual Totals				35,111.69	24,807.39	24,804.44	24,899.39	24,662.44	88,632.59	40,553.01	40,256.91

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 (\$7,980.34), lost earnings (\$183,621.08), pain and suffering (\$186,401.83), and past unreimbursable expenses (\$16,122.94): \$394,126.19.
 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 Roseanne Borrero

ITEMS OF COMPENSATION	G.R.	*	M	Compensation Year 18	Compensation Year 19	Compensation Year 20	Compensation Year 21	Compensation Years 22-24	Compensation Year 25	Compensation Years 26-30	Compensation Years 31-Life
				2027	2028	2029	2030	2031-2033	2034	2035-2039	2040-Life
Over the bed Table	4%			15.57	15.57	15.57	15.57	15.57	15.57	15.57	15.57
Reacher	4%			7.27	7.27	7.27	7.27	7.27	7.27	7.27	7.27
Adapt. Equip for Kitchen	4%			50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00
Adapt. Grooming Equip	4%			30.00	30.00	30.00	30.00	30.00	30.00	30.00	30.00
2 Sets Hospital Sheets	4%			72.00	72.00	72.00	72.00	72.00	72.00	72.00	72.00
Adult Diapers	4%			787.00	787.00	787.00	787.00	787.00	787.00	787.00	787.00
Bed Liners	4%			821.00	821.00	821.00	821.00	821.00	821.00	821.00	821.00
Disposable Gloves	4%			876.00	876.00	876.00	876.00	876.00	876.00	876.00	876.00
Wipes	4%			281.05	281.05	281.05	281.05	281.05	281.05	281.05	281.05
Hand Sanitizer	4%			47.88	47.88	47.88	47.88	47.88	47.88	47.88	47.88
YMCA	4%		M								
Homemaker/Companion	4%		M	25,550.00	25,550.00	51,100.00	51,100.00	51,100.00	51,100.00	102,200.00	140,160.00
Home Maint	4%		M								
Adapted Van	4%								37,200.00	3,720.00	3,720.00
Home Mods: w/Acorn Lft	4%						11,500.00	766.67	766.67	766.67	766.67
Second Floor Wheelchair	4%			32.90	32.90	32.90	32.90	32.90	32.90	32.90	32.90
Lost Earnings											
Pain and Suffering											
Past Unreimbursable Exp.											
Annual Totals				40,460.91	40,324.91	66,942.91	79,478.91	68,745.58	105,945.58	123,565.58	161,525.58

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 As soon as practicable after entry of judgment, respondent shall make the following payment to petitioner for Yr 1 life care expenses (\$7,980.34), lost earnings (\$183,621.08), pain and suffering (\$186,401.83), and past unreimbursable expenses (\$16,122.94): \$394,126.19.
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