



Daniels. The court is convinced, based on its experience and information in the record, that this award shall provide reasonable compensation to cover petitioner's vaccine-related expenses.

### **Items of Compensation**

As stated in the Proffer, "[t]he parties recommend that the compensation provided to Thurman Daniels should be made through a combination of lump sum payments and future annuity payments " as described therein. Proffer at II.

#### **A. Life Care Items:**

The court awards petitioner compensation for all items provided in the Life Care Plan as contemplated in respondent's Proffer at I. See R Ex K, Final life care plan for Thurman Daniels, filed Feb. 8, 2012; Attachment to Proffer, Appendix Tab A, Items of Compensation for Thurman Daniels, filed Feb. 14, 2012.

#### **B. Lost Earnings:**

The court awards petitioner the amount of \$364,143.00, representing compensation for petitioner's past and future lost earnings.

#### **C. Pain and Suffering:**

The court awards \$213,074.05 for actual and projected pain and suffering. "This amount reflects that the award for projected pain and suffering has been reduced to net present value." Proffer at I.C. (citing 42 U.S.C. § 300aa-15(a)(4)).

#### **D. Past Unreimbursable Expenses:**

The court awards \$3,310.92 for past unreimbursable expenses incurred by petitioner related to his vaccine-related injury.

#### **E. Medicaid Lien:**

The court awards petitioner \$23,650.45 in satisfaction of a Medicaid lien from the Commonwealth of Pennsylvania.

### **CONCLUSION**

Petitioner is entitled to an award under the Vaccine Program to provide for compensable expenses. The undersigned recognizes and appreciates the good efforts of counsel on behalf of their respective clients. Based on the foregoing, the court hereby **ADOPTS** the parties' Proffer, attached hereto, and awards compensation in the amount and on the terms set forth therein. **Specifically, petitioner is awarded:**

- a. a lump sum payment of \$682,645.10 in the form of a check payable to petitioner, Thurman Daniels, for life care expenses, lost earnings, pain and suffering and past unreimbursable expenses;**

- b. a lump sum payment of \$23,650.45 in the form of a check payable jointly to petitioner and the Commonwealth of Pennsylvania, DTPL/Recovery Section, PO Box 8486, Harrisburg, PA 17105-8486, Attn: Ms. Desiree D. Havasi, representing satisfaction of the Commonwealth of Pennsylvania Medicaid lien;**
- c. and petitioner is also awarded an amount sufficient to purchase the annuity contract described in section II.C. of respondent's Proffer on Award of Compensation.**

The Clerk of the Court is directed to enter judgment accordingly.

**IT IS SO ORDERED.<sup>2</sup>**

s/ Gary J. Golkiewicz  
Gary J. Golkiewicz  
Special Master

---

<sup>2</sup> This document constitutes a final "decision" in this case pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). Unless a motion for review of this decision is filed within 30 days, the Clerk of the Court shall enter judgment in accord with this decision. Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.

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

THURMAN DANIELS,	)	
	)	
Petitioner,	)	No. 07-462V
v.	)	Special Master Golkiewicz
	)	
SECRETARY OF HEALTH	)	
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 Laura Fox, MSN, RN, CLCP, to provide an estimation of Thurman Daniels’s future vaccine-injury related needs. For the purposes of this proffer, the term “vaccine related” is as described in the special master’s Ruling on Entitlement issued May 20, 2010. All items of compensation identified in the life care plan, filed on February 8, 2012, as Respondent’s Exhibit K, are supported by the evidence, and are illustrated by the chart entitled Appendix A: Items of Compensation for Thurman Daniels, attached hereto as Tab A.<sup>1</sup> Respondent proffers that Thurman Daniels 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.

---

<sup>1</sup> The 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.

B. Lost Earnings

The parties agree that based upon the evidence of record, Thurman Daniels has suffered past loss of earnings and will not be gainfully employed in the future. Therefore, respondent proffers that Thurman Daniels should be awarded past and future lost earnings as provided under the Vaccine Act, 42 U.S.C. § 300aa-15(a)(3)(A). Respondent proffers that the appropriate award for Thurman Daniels's lost earnings is \$364,143.00. Petitioner agrees.

C. Pain and Suffering

Respondent proffers that Thurman Daniels should be awarded \$213,074.05 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 Thurman Daniels's expenditure of past unreimbursable expenses related to his vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$3,310.92. Petitioner agrees.

E. Medicaid Lien

Respondent proffers that Thurman Daniels should be awarded funds to satisfy the Commonwealth of Pennsylvania Medicaid lien in the amount of \$23,650.45, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the Commonwealth of Pennsylvania may have against any individual as a result of any Medicaid payments the Commonwealth of Pennsylvania has made to or on behalf of Thurman Daniels 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 November 21, 2003, under Title XIX of the Social Security Act.

**II. Form of the Award**

The parties recommend that the compensation provided to Thurman Daniels 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 \$682,645.10, representing compensation for life care expenses expected to be incurred during the first year after judgment (\$102,117.13), lost earnings (\$364,143.00), pain and suffering (\$213,074.05), and past unreimbursable expenses (\$3,310.92), in the form of a check payable to petitioner, Thurman Daniels.

B. A lump sum payment of \$23,650.45, representing compensation for satisfaction of the Commonwealth of Pennsylvania Medicaid lien, payable jointly to petitioner and

Commonwealth of Pennsylvania  
DTPL/Recovery Section  
P.O. Box 8486  
Harrisburg, PA 17105-8486  
Attn: Ms. Desiree D. Havasi

Petitioner agrees to endorse this payment to the Commonwealth.

C. An amount sufficient to purchase an 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 petitioner, Thurman Daniels, only so long as Thurman Daniels 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.

---

<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> Petitioner authorizes the disclosure of certain documents filed by the petitioner 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. Petitioner agrees.

2. Life-contingent annuity

Petitioner will continue to receive the annuity payments from the Life Insurance Company only so long as he, Thurman Daniels, 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 Thurman Daniels's death.

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

A.	Lump Sum paid to petitioner, Thurman Daniels:	<b>\$682,645.10</b>
B.	Reimbursement for Medicaid lien:	<b>\$ 23,650.45</b>
C.	An amount sufficient to purchase the annuity contract described above in section II. C.	

Respectfully submitted,

TONY WEST  
Assistant Attorney General

MARK W. ROGERS  
Acting Director  
Torts Branch, Civil Division

VINCENT J. MATANOSKI  
Acting Deputy Director  
Torts Branch, Civil Division

ALTHEA WALKER DAVIS  
Senior Trial Counsel  
Torts Branch, Civil Division

S/Voris E. Johnson, Jr.  
VORIS E. JOHNSON, JR.  
Trial Attorney  
Torts Branch, Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, D.C. 20044-0146  
Telephone: (202) 616-4136

Dated: February 14, 2012