

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

\*\*\*\*\*  
ZVI FISCH and TZIPORA FISCH, \*  
Legal representative of a minor child, \*  
DOV FISCH, \* No. 10-382V  
\* Special Master Christian J. Moran  
\*  
Petitioners, \*  
\*  
v. \* Filed: November 8, 2013  
\*  
SECRETARY OF HEALTH \* Damages; decision based on proffer;  
AND HUMAN SERVICES, \* measles-mumps-rubella vaccine;  
\* encephalitis; on-Table injury.  
Respondent. \*  
\*\*\*\*\*

Solomon Rosengarten, Esq., Brooklyn, NY, for Petitioner;  
Lara A. Englund, United States Department of Justice, Washington, DC, for Respondent.

### **UNPUBLISHED DECISION AWARDING DAMAGES<sup>1</sup>**

On June 21, 2010, Zvi and Tzipora Fisch filed a petition for compensation, as legal representatives of their child, Dov Fisch (Dov), alleging that he suffered encephalitis caused by his receipt of a measles-mumps-rubella (“MMR”) vaccine, which he received on June 25, 2007. The petitioners seek compensation pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq. (2006). On February 10, 2011, the undersigned ruled, based upon respondent’s concession, see Respondent’s Report, filed January 24, 2011, that petitioners are entitled to compensation.

On November 5, 2013, respondent filed a Proffer on Award of Compensation. Based upon the record as a whole, the special master finds the Proffer reasonable and that

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<sup>1</sup> The E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002), requires that the Court post this decision on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

petitioners are entitled to an award as stated in the Proffer. Pursuant to the attached Proffer (Appendix A), the court awards petitioners:

- A. A lump sum payment of \$870,099 .19, representing trust seed funds consisting of the present year cost of compensation for facility expenses in Compensation Year 2028 through Compensation Year 2030 (\$613,200.00) and life care expenses in the first year after judgment (\$256,899.19), in the form of a check payable to Regions Bank, as Trustee of the Reversionary Trust established for the benefit of Dov Fisch, as set forth in Appendix A: Items of Compensation for Dov Fisch;**
- B. A lump sum payment of \$848,697.87, representing compensation for lost future earnings (\$616,828.82) and pain and suffering (\$231,869.05), in the form of a check payable to petitioners as guardians/conservators of Dov Fisch, for the benefit of Dov Fisch. No payments shall be made until petitioners provide respondent with documentation establishing that they have been appointed as the guardians/conservators of Dov Fisch's estate;**
- C. A lump sum payment of \$1,590,163.70, representing compensation for satisfaction of the New York City lien, payable jointly to petitioners and**

**NYC Human Resources Administration  
Division of Liens and Recovery  
P.O. Box 3786 - Church Street Station  
New York, NY 10008-3786  
Tel: (212) 274-5892  
Case ID#: QY94039F**

**Petitioners agree to endorse this payment to New York City.**

- D. A lump sum payment of \$237,268.50, representing compensation for satisfaction of the Suffolk County lien, payable jointly to petitioners and;**

**County of Suffolk  
Department of Social Services  
P.O. Box 18100  
Hauppauge, NY 11788-8900  
Attn: Ms. Patricia Martin  
Case ID #: MOOR54977**

**Petitioners agree to endorse this payment to Suffolk County.**

**E. 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 (Appendix A), 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 Regions Bank, as Trustee of the Reversionary Trust established for the benefit of Dov Fisch, only so long as Dov Fisch is alive at the time a particular payment is due. At the Secretary's sole discretion, the periodic payments may be provided to the Trustee of the Reversionary Trust in monthly, quarterly, annual or other installments. The "annual amounts" set forth in the chart at Tab A (Appendix A) describe only the total yearly sum to be paid to the Trustee of the Reversionary Trust 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, AaI, 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 .

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.

Any questions may be directed to my law clerk, Mary Holmes, at (202) 357-6353.

**IT IS SO ORDERED.**

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Christian J. Moran  
Special Master

**ORIGINAL**

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

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ZVI FISCH and TZIPORA FISCH,	)
legal representatives of a minor child,	)
DOV FISCH,	)
	)
Petitioners,	)
	)
v.	)
	)
SECRETARY OF THE DEPARTMENT OF	)
HEALTH AND HUMAN SERVICES,	)
	)
Respondent.	)

No. 10-382V  
Special Master  
Christian J. Moran

**FILED**  
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U.S. COURT OF  
FEDERAL CLAIMS

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

**I. Items of Compensation**

**A. Life Care Items**

The respondent engaged life care planner, Laura Fox, MSN, BSN, RN, CLCP, to provide an estimation of Dov Fisch’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 January 24, 2011. 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 Dov Fisch, attached hereto as Tab A.<sup>1</sup> Respondent proffers that Dov Fisch 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.

<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 Future Earnings

The parties agree that based upon the evidence of record, Dov Fisch will not be gainfully employed in the future. Therefore, respondent proffers that Dov Fisch 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 Dov Fisch's lost future earnings is \$616,828.82.

Petitioners agree.

C. Pain and Suffering

Respondent proffers that Dov Fisch should be awarded \$231,869.05 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). Petitioners agree.

D. Past Unreimbursable Expenses

Petitioners have supplied no evidence of their expenditure of past unreimbursable expenses related to Dov Fisch's vaccine-related injury. Respondent proffers that petitioners should not be awarded past unreimbursable expenses. Petitioners agree.

E. New York City Medicaid Lien

Respondent proffers that Dov Fisch should be awarded funds to satisfy the New York City lien in the amount of \$1,590,163.70, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action that New York City may have against any individual as a result of any Medicaid payments New York City has made to or on behalf of Dov Fisch 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 June 25, 2007, under Title XIX of the Social Security Act.

F. Suffolk County Medicaid Lien

Respondent proffers that Dov Fisch should be awarded funds to satisfy the Suffolk County lien in the amount of \$237,268.50, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action that Suffolk County may have against any individual as a result of any Medicaid payments Suffolk County has made to or on behalf of Dov Fisch 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 June 25, 2007, under Title XIX of the Social Security Act.

II. Form of the Award

The parties recommend that the compensation provided to Dov Fisch 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 \$870,099.19, representing trust seed funds consisting of the present year cost of compensation for facility expenses in Compensation Year 2028 through Compensation Year 2030 (\$613,200.00) and life care expenses in the first year after judgment (\$256,899.19), in the form of a check payable to Regions Bank, as Trustee of the Reversionary Trust established for the benefit of Dov Fisch, as set forth in Appendix A: Items of Compensation for Dov Fisch;

B. A lump sum payment of \$848,697.87, representing compensation for lost future earnings (\$616,828.82) and pain and suffering (\$231,869.05), in the form of a check payable to petitioners as guardians/conservators of Dov Fisch, for the benefit of Dov Fisch. No payments shall be made until petitioners provide respondent with documentation establishing that they have been appointed as the guardians/conservators of Dov Fisch's estate;

C. A lump sum payment of \$1,590,163.70, representing compensation for satisfaction of the New York City lien, payable jointly to petitioners and

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D. A lump sum payment of \$237,268.50, representing compensation for satisfaction of the Suffolk County lien, payable jointly to petitioners and

County of Suffolk  
Department of Social Services  
P.O. Box 18100  
Hauppauge, NY 11788-8900  
Attn: Ms. Patricia Martin  
Case ID #: M00R54977

Petitioners agree to endorse this payment to Suffolk County.

E. 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

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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.

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 Regions Bank, as Trustee of the Reversionary Trust established for the benefit of Dov Fisch, only so long as Dov Fisch is alive at the time a particular payment is due. At the Secretary's sole discretion, the periodic payments may be provided to the Trustee of the Reversionary Trust 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 the Trustee of the Reversionary Trust 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 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

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

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<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.

3. Guardianship

No payments shall be made until petitioners provide respondent with documentation establishing that they have been appointed as the guardians/conservators of Dov Fisch's estate. If petitioners are not authorized by a court of competent jurisdiction to serve as guardians/conservators of the estate of Dov Fisch, any such payment shall be made to the party or parties appointed by a court of competent jurisdiction to serve as guardians/ conservators of the estate of Dov Fisch upon submission of written documentation of such appointment to the Secretary.

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

A.	Lump sum paid to the Trustee of the Reversionary Trust established for the benefit Dov Fisch:	<b>\$ 870,099.19</b>
B.	Lump sum paid to petitioners as the court-appointed guardians/conservators of Dov Fisch's estate:	<b>\$ 848,697.87</b>
C.	New York City Medicaid lien:	<b>\$1,590,163.70</b>
D.	Suffolk County Medicaid Lien:	<b>\$ 237,268.50</b>
E.	An amount sufficient to purchase the annuity contract described above in section II. E.	

Respectfully submitted,

STUART F. DELERY  
Assistant Attorney General

RUPA BHATTACHARYYA  
Director  
Torts Branch, Civil Division

VINCENT J. MATANOSKI  
Deputy Director  
Torts Branch, Civil Division

  
HEATHER PEARLMAN  
Senior Trial Attorney  
Torts Branch, Civil Division

  
LARA A. ENGLUND  
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) 307-3013

Dated: November 5, 2013

Appendix A: Items of Compensation for Dov Fisch

ITEMS OF COMPENSATION	G.R.	*	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
			2013	2014	2015	2016	2017	2018	2019	2020
Health Insurance Premium	5%		5,052.00	5,052.00	5,052.00	5,052.00	5,052.00	5,052.00	5,052.00	5,052.00
Medicare Part B Premium	5%									
Medicare Suppl Plan F Premium	5%									
Medicare Part D Deductible	5%									
Medicare Part D Premium	5%									
Medicare Part D RX Costs	5%									
Neurology	5%	*	340.00	80.00	80.00	80.00	80.00	80.00	80.00	80.00
Urology	5%	*	170.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00
Pulmonology	5%	*	2,340.00	480.00	480.00	480.00	480.00	480.00	480.00	480.00
Gastro-enterology	5%	*	340.00	80.00	80.00	80.00	80.00	80.00	80.00	80.00
Ophthal-mology	5%	*	150.00	20.00	20.00	20.00	20.00	20.00	20.00	20.00
Orthopedic Follow-up	5%	*	220.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00
Specialty Care for Chronic Intracranial Infection	5%	*	220.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00
Anesthesia for Dental Exams	5%		862.50	862.50	862.50	862.50	862.50	862.50	862.50	862.50
Trust Seed/ Avalon Gardens Rehab & Health Care Cntr	4%		817,600.00	204,400.00	204,400.00	204,400.00	204,400.00	204,400.00	204,400.00	204,400.00
Case Mngt	4%		3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00
Dietician	4%	*	240.00	80.00	80.00	80.00	80.00	80.00	80.00	80.00
PT Eval	4%	*	440.00	80.00	80.00	80.00	80.00	80.00	80.00	80.00
OT Eval	4%	*	440.00	80.00	80.00	80.00	80.00	80.00	80.00	80.00
CBC	5%	*	388.00							
Chem Panel	5%	*	388.00							
Liver Function Panel	5%	*	164.00							
MRI of Brain	5%	*	2,500.00							
Repiratory Cultures	5%	*	852.00							
Urinalysis	5%	*	190.00							
Urine Culture	5%	*	300.00							
Chest X-ray	5%	*	600.00							
Hip & Spine X-rays	5%	*	500.00							
X-ray Abdomen	5%	*	500.00							

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ITEMS OF COMPENSATION	G.R.	*	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
			2013	2014	2015	2016	2017	2018	2019	2020
DDAVP	5%	*	9,432.12	9,432.12	9,432.12	9,432.12	9,432.12	9,432.12	9,432.12	9,432.12
Furoesmid	5%	*	203.40	203.40	203.40	203.40	203.40	203.40	203.40	203.40
Levo-thyroxine	5%	*	83.94							
Colace	4%		117.48	117.48	117.48	117.48	117.48	117.48	117.48	117.48
Dulcolax	4%		51.98	51.98	51.98	51.98	51.98	51.98	51.98	51.98
Prednisone	5%	*	47.98							
Baclofen	5%	*	139.92							
Ferrous Sulfate	4%		31.98	31.98	31.98	31.98	31.98	31.98	31.98	31.98
Lacri-Lube OTC	4%		239.88	239.88	239.88	239.88	239.88	239.88	239.88	239.88
Pulmicort	5%	*	1,319.94	120.00	120.00	120.00	120.00	120.00	120.00	120.00
Albuterol	5%	*	394.20							
Nystatin	5%	*	119.96	119.96	119.96	119.96	119.96	119.96	119.96	119.96
Silver Sulfadizine	5%		131.96	131.96	131.96	131.96	131.96	131.96	131.96	131.96
Antibiotic	5%	*	170.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00
Mineral Oil	4%		32.97	32.97	32.97	32.97	32.97	32.97	32.97	32.97
WC Frame	4%	*								
Custom Seating	4%	*								
WC, Adult	4%	*								
WC Maint	4%		200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00
Hand Splints	4%	*	66.78	66.78	66.78	66.78	66.78	66.78	66.78	66.78
AFOs	4%	*								
Gel Mattress Overlay	4%		185.00		185.00		185.00		185.00	
Ilex Skin Protector Paste	4%		377.00	377.00	377.00	377.00	377.00	377.00	377.00	377.00
Nystatin Cream	4%		21.00	21.00	21.00	21.00	21.00	21.00	21.00	21.00
Hospitalization	5%	*	14,000.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00
ER	5%	*	2,500.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00
Transport to Hospital	4%		1,000.00							
Transport to Facility: Parents	4%		1,435.20	1,435.20	1,435.20	1,435.20	1,435.20	1,435.20	1,435.20	1,435.20
Lost Future Earnings			616,828.82							
Pain and Suffering			231,869.05							

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ITEMS OF COMPENSATION	G.R.	*	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
			2013	2014	2015	2016	2017	2018	2019	2020
Past Unreimbursable Expenses (N/A)										
Medicaid Lien: New York City			1,590,163.70							
Medicaid Lien: Suffolk County			237,268.50							
Annual Totals			3,546,229.26	227,656.21	227,841.21	227,656.21	227,841.21	227,656.21	227,841.21	227,656.21

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 the Regions Bank, as Trustee of the Reversionary Trust for trust seed (\$613,200.00) and Yr 1 LCP Cash (\$256,899.19): \$870,099.19.  
 As soon as practicable after entry of judgment, respondent shall make the following payment to the court-appointed guardian(s)/ conservators of Dov Fisch for lost future earnings (\$616,828.82) and pain and suffering (\$231,869.05): \$848,697.87.  
 As soon as practicable after entry of judgment, respondent shall make the following payment jointly to petitioners and New York City, as reimbursement of the city's Medicaid lien: \$1,590,163.70.  
 As soon as practicable after entry of judgment, respondent shall make the following payment jointly to petitioners and Suffolk County, as reimbursement of the county's Medicaid lien: \$237,268.50.  
 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 in column "G.R." above, compounded annually from the date of judgment.  
 Items denoted with an asterisk (\*) covered by health insurance and/or Medicare.

Appendix A: Items of Compensation for Dov Fisch

ITEMS OF COMPENSATION	G.R.	*	Compensation Year 9 2021	Compensation Year 10 2022	Compensation Year 11 2023	Compensation Year 12 2024	Compensation Year 13 2025	Compensation Year 14 2026	Compensation Year 15 2027	Compensation Year 16 2028
Health Insurance Premium	5%		5,052.00	5,052.00	5,052.00	5,052.00	5,052.00	5,052.00	5,052.00	5,052.00
Medicare Part B Premium	5%									
Medicare Suppl Plan F Premium	5%									
Medicare Part D Deductible	5%									
Medicare Part D Premium	5%									
Medicare Part D RX Costs	5%									
Neurology	5%	*	80.00	80.00	80.00	80.00	80.00	80.00	80.00	80.00
Urology	5%	*	40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00
Pulmonology	5%	*	480.00	480.00	480.00	480.00	480.00	480.00	480.00	480.00
Gastro-enterology	5%	*	80.00	80.00	80.00	80.00	80.00	80.00	80.00	80.00
Ophthal-mology	5%	*	20.00	20.00	20.00	20.00				
Orthopedic Follow-up	5%	*	40.00	40.00	40.00	40.00				
Specialty Care for Chronic Intracranial Infection	5%	*	40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00
Anesthesia for Dental Exams	5%		862.50	862.50	862.50	862.50	862.50	862.50	862.50	862.50
Trust Seed/ Avalon Gardens Rehab & Health Care Cntr	4%		204,400.00	204,400.00	204,400.00	204,400.00	204,400.00	204,400.00	204,400.00	-
Case Mngt	4%		3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	750.00
Dietician	4%	*	80.00	80.00	80.00	80.00	80.00	80.00	80.00	80.00
PT Eval	4%	*	80.00	80.00	80.00	80.00	80.00	80.00	80.00	80.00
OT Eval	4%	*	80.00	80.00	80.00	80.00	80.00	80.00	80.00	80.00
CBC	5%	*								
Chem Panel	5%	*								
Liver Function Panel	5%	*								
MRI of Brain	5%	*								
Respiratory Cultures	5%	*								
Urinalysis	5%	*								
Urine Culture	5%	*								
Chest X-ray	5%	*								
Hip & Spine X-rays	5%	*								
X-ray Abdomen	5%	*								

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ITEMS OF COMPENSATION	G.R.	*	Compensation Year 9 2021	Compensation Year 10 2022	Compensation Year 11 2023	Compensation Year 12 2024	Compensation Year 13 2025	Compensation Year 14 2026	Compensation Year 15 2027	Compensation Year 16 2028
DDAVP	5%	*	9,432.12	9,432.12	9,432.12	9,432.12	9,432.12	9,432.12	9,432.12	9,432.12
Furoesmid	5%	*	203.40	203.40	203.40	203.40	203.40	203.40	203.40	203.40
Levo-thyroxine	5%	*								
Colace	4%		117.48	117.48	117.48	117.48	117.48	117.48	117.48	117.48
Dulcolax	4%		51.98	51.98	51.98	51.98	51.98	51.98	51.98	51.98
Prednisone	5%	*								
Baclofen	5%	*								
Ferrous Sulfate	4%		31.98	31.98	31.98	31.98	31.98	31.98	31.98	31.98
Lacri-Lube OTC	4%		239.88	239.88	239.88	239.88	239.88	239.88	239.88	239.88
Pulmicort	5%	*	120.00	120.00	120.00	120.00	120.00	120.00	120.00	120.00
Albuterol	5%	*								
Nystatin	5%	*	119.96	119.96	119.96	119.96	119.96	119.96	119.96	119.96
Silver Sulfadizine	5%		131.96	131.96	131.96	131.96	131.96	131.96	131.96	131.96
Antibiotic	5%	*	40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00
Mineral Oil	4%		32.97	32.97	32.97	32.97	32.97	32.97	32.97	32.97
WC Frame	4%	*								
Custom Seating	4%	*								
WC, Adult	4%	*								
WC Maint	4%		200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00
Hand Splints	4%	*	66.78	66.78	66.78	66.78	66.78	66.78	66.78	66.78
AFOs	4%	*								
Gel Mattress Overlay	4%		185.00		185.00		185.00		185.00	
Ilex Skin Protector Paste	4%		377.00	377.00	377.00	377.00	377.00	377.00	377.00	377.00
Nystatin Cream	4%		21.00	21.00	21.00	21.00	21.00	21.00	21.00	21.00
Hospitalization	5%	*	500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00
ER	5%	*	200.00	200.00	200.00	200.00	200.00	200.00	200.00	200.00
Transport to Hospital	4%									
Transport to Facility: Parents	4%		1,435.20	1,435.20	1,435.20	1,435.20				
Lost Future Earnings										
Pain and Suffering										

Appendix A: Items of Compensation for Dov Fisch

ITEMS OF COMPENSATION	G.R.	*	Compensation Year 9 2021	Compensation Year 10 2022	Compensation Year 11 2023	Compensation Year 12 2024	Compensation Year 13 2025	Compensation Year 14 2026	Compensation Year 15 2027	Compensation Year 16 2028
Past Unreimbursable Expenses (N/A)										
Medicaid Lien: New York City										
Medicaid Lien: Suffolk County										
Annual Totals			227,841.21	227,656.21	227,841.21	227,656.21	226,346.01	226,161.01	226,346.01	19,511.01

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 the Regions Bank, as Trustee of the Reversionary Trust for trust seed (\$613,200.00) and Yr 1 LCP Cash (\$256,899.19): \$870,099.19.  
 As soon as practicable after entry of judgment, respondent shall make the following payment to the court-appointed guardian(s)/ conservators of Dov Fisch for lost future earnings (\$616,828.82) and pain and suffering (\$231,869.05): \$848,697.87.  
 As soon as practicable after entry of judgment, respondent shall make the following payment jointly to petitioners and New York City, as reimbursement of the city's Medicaid lien: \$1,590,163.70.  
 As soon as practicable after entry of judgment, respondent shall make the following payment jointly to petitioners and Suffolk County, as reimbursement of the county's Medicaid lien: \$237,268.50.  
 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 in column "G.R." above, compounded annually from the date of judgment.  
 Items denoted with an asterisk (\*) covered by health insurance and/or Medicare.

Appendix A: Items of Compensation for Dov Fisch

ITEMS OF COMPENSATION	G.R.	*	Compensation Year 17 2029	Compensation Year 18 2030	Compensation Year 19 2031	Compensation Year 20 2032	Compensation Year 21 2033	Compensation Years 22-37 2034-2049	Compensation Years 38-Life 2050-Life
Health Insurance Premium	5%		5,052.00	5,052.00	5,052.00	5,052.00	5,052.00	5,052.00	
Medicare Part B Premium	5%								1,258.80
Medicare Suppl Plan F Premium	5%								3,886.92
Medicare Part D Deductible	5%								325.00
Medicare Part D Premium	5%								571.20
Medicare Part D RX Costs	5%								1,849.08
Neurology	5%	*	80.00	80.00	80.00	80.00	80.00	80.00	
Urology	5%	*	40.00	40.00	40.00	40.00	40.00	40.00	
Pulmonology	5%	*	480.00	480.00	480.00	480.00	480.00	480.00	
Gastro-enterology	5%	*	80.00	80.00	80.00	80.00	80.00	80.00	
Ophthal-mology	5%	*							
Orthopedic Follow-up	5%	*							
Specialty Care for Chronic Intracranial Infection	5%	*	40.00	40.00	40.00	40.00	40.00	40.00	
Anesthesia for Dental Exams	5%		862.50	862.50	862.50	862.50	862.50	862.50	862.50
Trust Seed/ Avalon Gardens Rehab & Health Care Cntr	4%		-	-	204,400.00	204,400.00	204,400.00	204,400.00	204,400.00
Case Mngt	4%		750.00	750.00	750.00	750.00	750.00	750.00	750.00
Dietician	4%	*	80.00	80.00	80.00	80.00	80.00	80.00	
PT Eval	4%	*	80.00	80.00	80.00	80.00	80.00	80.00	
OT Eval	4%	*	80.00	80.00	80.00	80.00	80.00	80.00	
CBC	5%	*							
Chem Panel	5%	*							
Liver Function Panel	5%	*							
MRI of Brain	5%	*							
Repiratory Cultures	5%	*							
Urinalysis	5%	*							
Urine Culture	5%	*							
Chest X-ray	5%	*							
Hip & Spine X-rays	5%	*							
X-ray Abdomen	5%	*							

Appendix A: Items of Compensation for Dov Fisch

ITEMS OF COMPENSATION	G.R.	*	Compensation	Compensation	Compensation	Compensation	Compensation	Compensation	
			Year 17	Year 18	Year 19	Year 20	Year 21	Years 22-37	Years 38-Life
			2029	2030	2031	2032	2033	2034-2049	2050-Life
DDAVP	5%	*	9,432.12	9,432.12	9,432.12	9,432.12	9,432.12	9,432.12	
Furoesmid	5%	*	203.40	203.40	203.40	203.40	203.40	203.40	
Levo-thyroxine	5%	*							
Colace	4%		117.48	117.48	117.48	117.48	117.48	117.48	117.48
Dulcolax	4%		51.98	51.98	51.98	51.98	51.98	51.98	51.98
Prednisone	5%	*							
Baclofen	5%	*							
Ferrous Sulfate	4%		31.98	31.98	31.98	31.98	31.98	31.98	31.98
Lacri-Lube OTC	4%		239.88	239.88	239.88	239.88	239.88	239.88	239.88
Pulmicort	5%	*	120.00	120.00	120.00	120.00	120.00	120.00	
Albuterol	5%	*							
Nystatin	5%	*	119.96	119.96	119.96	119.96	119.96	119.96	
Silver Sulfadizine	5%		131.96	131.96	131.96	131.96	131.96	131.96	131.96
Antibiotic	5%	*	40.00	40.00	40.00	40.00	40.00	40.00	
Mineral Oil	4%		32.97	32.97	32.97	32.97	32.97	32.97	32.97
WC Frame	4%	*							
Custom Seating	4%	*							
WC, Adult	4%	*							
WC Maint	4%		200.00	200.00	200.00	200.00	200.00	200.00	
Hand Splints	4%	*	66.78	66.78	66.78	66.78	66.78	66.78	
AFOs	4%	*							
Gel Mattress Overlay	4%		185.00		185.00		185.00	92.50	92.50
Ilex Skin Protector Paste	4%		377.00	377.00	377.00	377.00	377.00	377.00	377.00
Nystatin Cream	4%		21.00	21.00	21.00	21.00	21.00	21.00	21.00
Hospitalization	5%	*	500.00	500.00	500.00	500.00	500.00	500.00	
ER	5%	*	200.00	200.00	200.00	200.00	200.00	200.00	
Transport to Hospital	4%								
Transport to Facility: Parents	4%								
Lost Future Earnings									
Pain and Suffering									

Appendix A: Items of Compensation for Dov Fisch

ITEMS OF COMPENSATION	G.R.	*	Compensation Year 17 2029	Compensation Year 18 2030	Compensation Year 19 2031	Compensation Year 20 2032	Compensation Year 21 2033	Compensation Years 22-37 2034-2049	Compensation Years 38-Life 2050-Life
Past Unreimbursable Expenses (N/A)									
Medicaid Lien: New York City									
Medicaid Lien: Suffolk County									
Annual Totals			19,696.01	19,511.01	224,096.01	223,911.01	224,096.01	224,003.51	215,000.25

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 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 in column "G.R." above, compounded annually from the date of judgment.  
 Items denoted with an asterisk (\*) covered by health insurance and/or Medicare.

CERTIFICATE OF SERVICE

I hereby certify that on this 5<sup>th</sup> day of November, 2013, a true copy of the foregoing NOTICE OF FILING was served by first class mail, postage prepaid upon:

SOLOMON ROSENGARTEN  
Counsel of Record for the Petitioners  
1704 Avenue M  
Brooklyn, NY 11230

Chg' Chg' Jackson