



limited to, encephalopathy, arterial ischemic stroke, right hemiparesis, and other neurological injuries, the effects of which lasted for more than six months.

Respondent denies that Caitlin's encephalopathy, arterial ischemic stroke, right hemiparesis, and other neurological injuries were caused by the vaccine administered to her on May 14, 2007, and denies that her current disabilities are sequelae of her alleged injuries.

Nevertheless, the parties agree to the joint stipulation, attached hereto as Appendix A. The undersigned finds said stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

Damages awarded in that stipulation include:

- A. A lump sum payment of \$150,000.00, which amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a), except as set forth below in paragraph B and C, in the form of a check payable to petitioners as guardians/conservators of Caitlin's estate;**
- B. A lump sum payment of \$5,088.71, representing reimbursement of the State of Michigan Medicaid lien, in the form of a check payable jointly to petitioners and**

**State of Michigan  
Department of Community Health  
Third Party Liability Division  
PO Box 30435  
Lansing, MI 48909  
Attn: Ms. Amanda Goerge; and**

**Petitioners agree to endorse this payment to the State of Michigan.**

- C. An amount sufficient to purchase the annuity contract described in the attached stipulation, 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 is directed to enter judgment in case 10-211V according to this decision and the attached stipulation.

Any questions may be directed to my law clerk, Jennifer C. Chapman, at (202) 357-6358.  
IT IS SO ORDERED.

S/ Christian J. Moran

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Christian J. Moran  
Special Master

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

TODD FOKKEN and PATRICIA FOKKEN,	)	
natural parents and guardians of	)	
CAITLIN FOKKEN, a minor,	)	
	)	<u>ECF</u>
Petitioners,	)	
v.	)	<b>No. 10-211V</b>
	)	<b>Special Master</b>
SECRETARY OF HEALTH	)	<b>Christian J. Moran</b>
AND HUMAN SERVICES,	)	
	)	
Respondent.	)	

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of their daughter, Caitlin Fokken (“Caitlin”), petitioners filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34 (the “Vaccine Program”). The petition seeks compensation for injuries allegedly related to Caitlin’s receipt of the Varicella vaccine, which vaccine is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3(a).
2. Caitlin received her second varicella vaccine on May 14, 2007.
3. The vaccine was administered within the United States.
4. Petitioners allege that Caitlin suffered vaccine injuries, including but not limited to: encephalopathy, arterial ischemic stroke, right hemiparesis, and other neurological injuries that were caused-in-fact by the Varicella vaccine administered to her on May 14, 2007. They further allege that Caitlin experienced residual effects of these injuries for more than six months.
5. Petitioners represent that there has been no prior award or settlement of a civil action

for damages on behalf of Caitlin as a result of her condition.

6. Respondent denies that Caitlin's encephalopathy, arterial ischemic stroke, right hemiparesis, and neurological injuries were caused by the vaccine administered to her on May 14, 2007, and denies that her current disabilities are sequelae of her alleged injuries.

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 \$150,000.00, which amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a), except as set forth below in paragraphs 8.b and 8.c, in the form of a check payable to petitioners as guardians/conservators of Caitlin's estate;
- b. A lump sum of \$5,088.71, representing reimbursement of the State of Michigan Medicaid lien, in the form of a check payable jointly to petitioners and

State of Michigan  
Department of Community Health  
Third Party Liability Division  
PO Box 30435  
Lansing, MI 48909  
Attn.: Ms. Amanda Goerge; and

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

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

9. 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.

10. The Secretary of Health and Human Services agrees to purchase an annuity contract from the Life Insurance Company for the benefit of Caitlin, pursuant to which the Life Insurance Company will agree to make payments periodically to petitioners for all remaining damages that would be available under 42 U.S.C. §300aa-15(a), as follows:

- a. Beginning on the first anniversary of the date of judgment, \$1,000.00 per month to be paid up to the anniversary of the date of judgment in year 2023, increasing at the rate of 3% compounded annually from the date payments in this sub-paragraph 10.a begin.  
Then,
- b. Beginning on the anniversary of the date of judgment in year 2023, \$2,829.87 per month for the remainder of Caitlin's life, increasing at the rate of 3% compounded annually from the date payments in this sub-paragraph 10.b. begin.

The payments provided for in this paragraph 10 shall be made as set forth above. Petitioners will continue to receive the annuity payments from the Life Insurance Company only so long as Caitlin is alive at the time that a particular payment is due. Written notice to the Secretary of Health and Human Services and to the Life Insurance Company shall be provided within twenty (20) days of Caitlin Fokken's death.

11. The annuity contract 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, 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 Caitlin 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 90 days of the date of judgment will become, duly authorized to serve as guardians/conservators of Caitlin's estate under the laws of the State of Michigan. No payments pursuant to this Stipulation shall be made until petitioners provide the Secretary with documentation establishing their appointment as guardians/conservators of Caitlin's estate. If petitioners are not authorized by a court of competent jurisdiction to serve as guardians/conservators of the estate of Caitlin Fokken 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 guardians/conservators of the estate of Caitlin Fokken 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 Caitlin, on behalf of themselves, Caitlin, 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. § 300aa-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 Caitlin resulting from, or alleged to have resulted from, the Varicella vaccine administered on or about May 14, 2007, as alleged by petitioners in a petition for vaccine compensation filed on or about April 2, 2010, in the United States Court of Federal Claims as petition No. 10-211V.

18. If Caitlin 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 the Varicella vaccine caused Caitlin's encephalopathy, arterial ischemic stroke, right hemiparesis, and neurological injuries; that any current disabilities are sequelae of her alleged injuries; or that Caitlin experienced the residual effects of these injuries 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 Caitlin Fokken.

END OF STIPULATION

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Respectfully submitted,

**PETITIONERS:**



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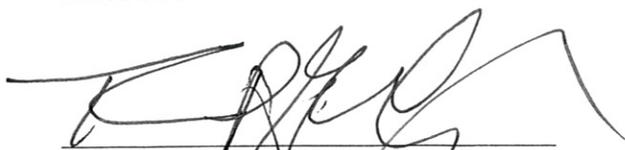
TODD FOKKEN



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PATRICIA FOKKEN

**ATTORNEY OF RECORD FOR  
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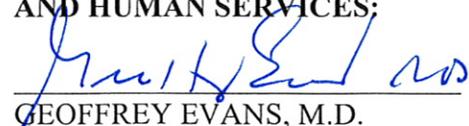
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Dated: 9/14/11