

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 04-81V

Filed: October 25, 2012

Not for publication

CHRISTINE BOLANDER and *
JOSEPH A. BOLANDER III for their own *
benefit and for the benefit of their daughter *
KATLYN ANN BOLANDER, *

Petitioners, *

v. *

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Respondent. *

John F. McHugh, New York, NY, for petitioners.
Traci R. Patton, Washington, DC, for respondent.

Damages decision based on proffer

MILLMAN, Special Master

DECISION AWARDING DAMAGES¹

On October 25, 2012, respondent filed a Proffer on Award of Compensation. On October 25, 2012, petitioners contacted the undersigned's law clerk accepting respondent's Proffer. Based on the record as a whole, the special master finds that petitioners are entitled to the award as stated in the Proffer. Pursuant to the terms stated in the attached Proffer, the court awards

¹ Because this decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this 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 delete 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 delete such material from public access.

petitioners:

- a. a lump sum payment of **\$462,891.68**, representing compensation for lost future earnings (\$215,543.07), pain and suffering (\$230,513.20), and life care expenses for Year One (\$16,835.41), in the form of a check payable to petitioners as guardian(s)/conservator(s) of Katlyn Ann Bolander, for the benefit of Katlyn Ann Bolander;
- b. a lump sum payment of **\$100,000.00**, representing compensation for past unreimbursable expenses, payable to Christine Bolander and Joseph A. Bolander III, petitioners; and
- c. an amount sufficient to purchase an annuity contract subject to the conditions described in section II. C. of the attached Proffer.

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: October 25, 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.

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

CHRISTINE BOLANDER and JOSEPH A. BOLANDER, III, for their own benefit and the benefit of their daughter, KATLYN ANN BOLANDER,)	
)	
Petitioners,)	
)	
v.)	No. 04-81V
)	Special Master Millman
SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

RESPONDENT'S PROFFER ON AWARD OF COMPENSATION

I. Items of Compensation

A. Life Care Items

Respondent engaged life care planner Julia Olijnyk Selah, Medical Legal Consulting Nurse Practitioner, to provide an estimation of Katlyn Ann Bolander’s future vaccine-injury related needs. For the purposes of this proffer, the term “vaccine-related” is as described in the special master’s decision dated May 31, 2006. The chart entitled Appendix A: Items of Compensation for Katlyn Ann Bolander, attached hereto as Tab A,¹ summarizes the items of compensation set forth in respondent’s life care plan. Respondent proffers that Katlyn Ann

¹ 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.

Bolander should be awarded all items of compensation set forth in the chart attached at Tab A.

Petitioners agree.

B. Lost Future Earnings

The parties agree that based upon the evidence of record, Katlyn Ann Bolander will more likely than not be employed at least on a part-time basis. Therefore, respondent proffers that Katlyn Ann Bolander should be awarded partial 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 Katlyn Ann Bolander's partial lost future earnings is \$215,543.07. Petitioners agree.

C. Pain and Suffering

Respondent proffers that Katlyn Ann Bolander should be awarded \$230,513.20 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

Evidence supplied by petitioners documents their expenditure of past unreimbursable expenses related to Katlyn Ann Bolander's vaccine-related injury. Respondent proffers that petitioners should be awarded past unreimbursable expenses in the amount of \$100,000.00. Petitioners agree.

E. Medicaid Lien

Petitioners represent that there are no outstanding Medicaid liens against Katlyn Ann Bolander.

II. Form of the Award

The parties recommend that the compensation provided to Katlyn Ann Bolander 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 \$462,891.68, representing compensation for lost future earnings (\$215,543.07), pain and suffering (\$230,513.20), and life care expenses for Year One (\$16,835.41), in the form of a check payable to petitioners as guardian(s)/conservator(s) of Katlyn Ann Bolander, for the benefit of Katlyn Ann Bolander. No payments shall be made until petitioners provide respondent with documentation establishing that they have been appointed as the guardian(s)/conservator(s) of Katlyn Ann Bolander's estate;

B. A lump sum payment of \$100,000.00, representing compensation for past unreimbursable expenses, payable to Christine Bolander and Joseph A. Bolander, III, petitioners;

C. An amount sufficient to purchase an annuity contract,² 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 company³ from

² In respondent's discretion, respondent may purchase one or more annuity contracts from one or more life insurance companies.

³ 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;

(continued...)

which the annuity will be purchased.⁴ 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 petitioners as guardian(s)/conservator(s) of the estate of Katlyn Ann Bolander, for the benefit of Katlyn Ann Bolander, only so long as Katlyn Ann Bolander is alive at the time a particular payment is due. At the Secretary's sole discretion, the periodic payments may be provided to petitioners 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 petitioners 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

(...continued)

- 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.

⁴ 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.

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

Petitioners will continue to receive the annuity payments from the Life Insurance Company only so long as Katlyn Ann Bolander 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 Katlyn Ann Bolander's death.

3. Guardianship

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

III. Summary of Recommended Payments Following Judgment

- | | | |
|----|---|----------------------|
| A. | Lump Sum paid to petitioners as guardian(s)/conservator(s) of Katlyn Ann Bolander's estate: | \$ 462,891.68 |
| B. | Lump sum paid to petitioners: | \$ 100,000.00 |
| C. | An amount sufficient to purchase the annuity contract described above in section II. C. | |

Respectfully submitted,

STUART F. DELERY
Acting Assistant Attorney General

RUPA BHATTACHARYYA
Director
Torts Branch, Civil Division

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

LINDA S. RENZI
Senior Trial Counsel
Torts Branch, Civil Division

s/ Traci R. Patton
TRACI R. PATTON
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) 353-1589

Dated: October 25, 2012

Appendix A: Items of Compensation for Katlyn Ann Bolander

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
				2012	2013	2014	2015	2016	2017	2018	2019
IBM PPO Health Ins Deductible	5%			1,022.00	1,022.00	1,022.00	1,022.00	1,022.00	1,022.00	1,022.00	1,022.00
Medicare Part B Premium	5%										
Medicare Part B Deductible	5%										
Oncology Care	5%	*		1,305.00	1,305.00	435.00	108.75	108.75	108.75	108.75	108.75
Oncology Labwork	5%	*		1,116.00	1,116.00	372.00	93.00	93.00	93.00	93.00	93.00
Ophthal-mology Care	5%	*		53.75	53.75	53.75	53.75	53.75	53.75	53.75	53.75
Endocrinology Care	5%	*		217.50	217.50	217.50	217.50				
Endocrinology Labwork	5%	*		47.00	89.60	89.60	89.60	44.80	44.80	44.80	44.80
Endocrinology X-rays	5%	*		44.60							
Ferritin Levels	5%	*		20.40	20.40	20.40	20.40	20.40	20.40	20.40	20.40
Calcium	4%			109.50	109.50	109.50	109.50	164.25	164.25	164.25	164.25
Vit D	4%			29.20	29.20	29.20	29.20	29.20	29.20	29.20	29.20
Pulmonolgy Care	5%	*		32.50	32.50	32.50	32.50	32.50	32.50	32.50	32.50
Cardiology Care	5%	*		535.00	535.00	535.00	535.00	535.00	535.00	535.00	535.00
Prograf	5%	*		1,432.00	1,432.00	1,432.00					
Acyclovir	5%	*		96.00	96.00	96.00					
Multi Vit	4%			60.83	60.83	60.83	60.83	60.83	60.83	60.83	60.83
Folic Acid Rx	5%	*		96.00	96.00	96.00	96.00	96.00	96.00	96.00	96.00
Premarin	5%	*		80.32	80.32	80.32	80.32	80.32	80.32	80.32	80.32
Protopic Ointment	5%	*		1,432.00	1,432.00	1,432.00					
Azithromycin	5%	*		18.20	18.20	18.20					
Lansoprazole	5%	*		96.00	96.00	96.00	96.00				
NebuPent	5%	*		1,177.80	1,177.80	1,177.80	1,177.80				
Dental X-rays	5%	*									
Dental Extractions/Impl/Crowns	5%	*						30,800.00			
ER Visits	5%	*		332.00	332.00	332.00					
ER Physician Fees	5%	*		120.00	120.00	120.00					
CBC	5%	*		14.00	14.00	14.00					
Venipuncture	5%	*		6.00	6.00	6.00					
Plastic Surgery Care	5%	*					500.00				
Scar Revision	5%	*					950.00				
Bilateral Breast Impl. Surgery	5%	*								2,450.00	

Appendix A: Items of Compensation for Katlyn Ann Bolander

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
				2012	2013	2014	2015	2016	2017	2018	2019
Counseling	4%	*		581.25	209.25	209.25	209.25	69.75	69.75	69.75	69.75
Psycho-Educational Eval	4%	*		687.50			687.50				
Tutoring	4%		M	2,088.00	2,088.00	2,088.00	2,088.00	2,088.00	2,088.00	2,088.00	2,088.00
Adt'l Tutoring	4%		M	2,448.00	2,448.00	2,448.00	2,448.00	2,448.00	2,448.00	2,448.00	2,448.00
Transport to Medical Locations	4%		M	1,371.46	1,371.46	1,371.46	1,371.46	1,371.46	1,371.46	1,371.46	1,371.46
Transport to Tutor	4%		M	165.60	165.60	165.60	165.60	165.60	165.60	165.60	165.60
Partial Lost Future Earnings				215,543.07							
Pain and Suffering				230,513.20							
Past Unreimbursable Expenses				100,000.00							
Annual Totals				562,891.68	15,773.91	14,159.91	12,241.96	39,283.61	8,483.61	10,933.61	8,483.61

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 court-appointed guardian(s)/ conservator(s) of the estate of Katlyn Ann Bolander for the benefit of Katlyn Ann Bolander, for lost future earnings (\$215,543.07), pain and suffering (\$230,513.20), and Yr 1 life care expenses (\$16,835.41): \$462,891.68.

As soon as practicable after entry of judgment, respondent shall make the following payment to petitioners, Christine Bolander and Joseph A. Bolander, III, for past un-reimbursable expenses: \$100,000.00.

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.

Items denoted with an "M" payable in 12 monthly installments at the discretion of respondent.

Appendix A: Items of Compensation for Katlyn Ann Bolander

ITEMS OF COMPENSATION	G.R.	*	M	Compensation Years 9-12 2020-2023	Compensation Years 13-51 2024-2062	Compensation Years 52-Life 2063-Life
IBM PPO Health Ins Deductible	5%			1,022.00		
Medicare Part B Premium	5%					1,198.80
Medicare Part B Deductible	5%					140.00
Oncology Care	5%	*		108.75	435.00	87.00
Oncology Labwork	5%	*		93.00	465.00	
Ophthal-mology Care	5%	*		53.75	215.00	43.00
Endocrinology Care	5%	*				
Endocrinology Labwork	5%	*		44.80	224.00	
Endocrinology X-rays	5%	*				
Ferritin Levels	5%	*		20.40	102.00	
Calcium	4%			164.25	164.25	164.25
Vit D	4%			29.20	29.20	29.20
Pulmonolgy Care	5%	*		32.50	130.00	26.00
Cardiology Care	5%	*		535.00	2,675.00	
Prograf	5%	*				
Acyclovir	5%	*				
Multi Vit	4%			60.83	60.83	60.83
Folic Acid Rx	5%	*		96.00	912.50	912.50
Premarin	5%	*		80.32	401.50	401.50
Protopic Ointment	5%	*				
Azithromycin	5%	*				
Lansoprazole	5%	*				
NebuPent	5%	*				
Dental X-rays	5%	*				
Dental Extractions/Impl/Crowns	5%	*				
ER Visits	5%	*				
ER Physician Fees	5%	*				
CBC	5%	*				
Venipuncture	5%	*				
Plastic Surgery Care	5%	*				
Scar Revision	5%	*				
Bilateral Breast Impl. Surgery	5%	*				

Appendix A: Items of Compensation for Katlyn Ann Bolander

ITEMS OF COMPENSATION	G.R.	*	M	Compensation	Compensation	Compensation
				Years 9-12 2020-2023	Years 13-51 2024-2062	Years 52-Life 2063-Life
Counseling	4%	*		69.75	279.00	55.80
Psycho-Educational Eval	4%	*				
Tutoring	4%		M			
Adt'l Tutoring	4%		M			
Transport to Medical Locations	4%		M	1,371.46	1,371.46	1,371.46
Transport to Tutor	4%		M			
Partial Lost Future Earnings						
Pain and Suffering						
Past Unreimbursable Expenses						
Annual Totals				3,782.01	7,464.74	4,490.34

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 court-appointed guardian(s)/ conservator(s) of the estate of Katlyn Ann Bolander for the benefit of Katlyn Ann Bolander, for lost future earnings (\$215,543.07), pain and suffering (\$230,513.20), and Yr 1 life care expenses (\$16,835.41): \$462,891.68.

As soon as practicable after entry of judgment, respondent shall make the following payment to petitioners, Christine Bolander and Joseph A. Bolander, III, for past un-reimbursable expenses: \$100,000.00.

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.

Items denoted with an "M" payable in 12 monthly installments at the discretion of respondent.