

at 5. Respondent concedes also that the evidence “demonstrates that [Margaret’s] paralytic poliomyelitis resulted from contact with” a person “who had received an OPV immunization.” *Id.* Respondent concedes further that Margaret’s condition “falls within the definition of a Table Injury under the Vaccine Act.” Report at 5-6, citing 42 C.F.R. § 100.3(a)(VI). Respondent concedes finally that “there is not a preponderance of the evidence to indicate that [Margaret’s] condition is unrelated to [Margaret’s] contact with an OPV recipient.” Report at 6, citing 42 U.S.C. § 300aa-13(a)(1)(B). Thus, respondent concludes that the Maleckys are entitled to Program compensation. Report at 6.

On July 15, 2005, respondent filed an amended proffer reflecting respondent’s recommendation on damages in this case. *See* Respondent’s Amended Proffer on Award of Compensation (Amended Proffer), filed July 15, 2005. The Maleckys accede to respondent’s Amended Proffer. *See generally* Amended Proffer. Based upon the record as a whole, the special master finds that the Amended Proffer is reasonable and appropriate.³

CONCLUSION

1. As provided in the Amended Proffer, Appendix A, respondent shall pay as soon as practicable after entry of judgment \$36,286.89 in a lump sum to the Maleckys. The amount represents compensation for the Maleckys’ actual unreimbursable expenses before the date of judgment. § 300aa-15(a)(1)(B); Amended Proffer ¶¶ I(C), II(B), III(B).
2. As provided in the Amended Proffer, Appendix A, respondent shall pay as soon as practicable after entry of judgment \$16,399.09 in a lump sum *jointly* to the Maleckys, as guardians and conservators of the estate of Margaret Malecky, and to Pennsylvania Department of Public Welfare, Bureau of Financial Operations/TPL, Harrisburg State Hospital Grounds, Building 42, Room 316, 2101 N. Cameron Street, Harrisburg, Pennsylvania 17110, Attention: Ms. Carol J. Zellers. The amount represents compensation for satisfaction of the state’s Medicaid lien. Amended Proffer ¶¶ I(D), II(C), III(C).
3. As provided in the Amended Proffer, Appendix A, respondent shall pay as soon as practicable after entry of judgment \$128,770.00 in a lump sum to the Maleckys, as guardians and conservators of the estate of Margaret Malecky, for the benefit of Margaret Malecky.

³ By reference, the special master incorporates respondent’s Amended Proffer into this decision on entitlement and damages.

The amount represents compensation for Margaret's life care expenses in the year following judgment, § 300aa-15(a)(1)(A), and compensation for Margaret's actual and projected pain and suffering and emotional distress. § 300aa-15(a)(4); Amended Proffer ¶¶ II(A), III(A).

4. Respondent shall purchase, and take ownership of, as soon as practicable after entry of judgment an annuity contract that will provide during Margaret's lifetime the amount reflected in the Amended Proffer, Appendix A, for each year after the one-year anniversary of entry of judgment. § 300aa-15(a)(1)(A). The annuity payments shall be payable to the Maleckys, as guardians and conservators of the estate of Margaret Malecky, for the benefit of Margaret Malecky. *As provided in the Amended Proffer, Appendix A, the annuity contract shall provide for a 4% compounded annual growth rate for all non-medical life care items. As provided in the Amended Proffer, Appendix A, the annuity contract shall provide for a 5% compounded annual growth rate for all medical life care items. As provided in the Amended Proffer, Appendix A, the growth rate shall be applied and compounded beginning on the date of judgment.* The insurer from whom respondent shall purchase the annuity contract must meet two criteria:
 - a. The company must have a minimum of \$250,000,000.00 of capital and surplus, exclusive of any mandatory security valuation reserve; and
 - b. The company must have one of the following ratings from two of the following rating organizations:
 - (i) A.M. Best Company: A++, A+, A+g, A+p, A+r, or A+s;
 - (ii) Moody's Investor Service Claims Paying Rating: Aa3, Aa2, Aa1 or Aaa;
 - (iii) Standard and Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+ or AAA;
 - (iv) Fitch Credit Rating Company, Insurance Company Claims Paying Ability Rating: AA-, AA, AA+ or AAA.

Amended Proffer ¶¶ II(D), III(D).

5. The special master determines that the Maleckys are not entitled to an award of compensation for Margaret's lost future earnings. § 300aa-15(a)(3)(B).

In the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment in the Maleckys' favor in complete conformity with this decision.⁴

The clerk of court shall send the Maleckys' copy of this decision on entitlement and damages to the Maleckys by overnight express delivery.

John F. Edwards
Special Master

⁴ Under Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review. Then, under Vaccine Rule 12(a), the Maleckys may expedite payment by filing an election to accept the judgment.