



Report from the Department of Justice

June 7, 2013

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Deputy Director, Torts Branch

Statistics

Reporting Period: 2/16/13 – 5/15/13

- I. Total Petitions Filed in the United States Court of Federal Claims this reporting period: 96
 - A. Autism: 0
 - B. Non-Autism: 96
 - i. Minors: 30
 - ii. Adults: 66

Statistics

Reporting Period: 2/16/13 – 5/15/13

II. Total Petitions Adjudicated this reporting period: 338

A. Compensated: 84

i. Cases conceded by HHS: 5

1. Decision awarding damages: 0

2. Decision adopting Proffer: 5

3. Decision adopting Settlement: 0

ii. Cases not conceded by HHS: 79

1. Decision awarding damages: 1

2. Decision adopting Proffer: 0

3. Decision adopting Settlement: 78

B. Not Compensated/Dismissed: 254

i. Decision dismissing Non-Autism: 26

ii. Decision dismissing Autism: 228

Statistics

Reporting Period: 2/16/13 – 5/15/13

III. Total Petitions Voluntarily Withdrawn this reporting period (no judgment will be issued): 3

A. Non-Autism: 3

B. Autism: 0

Glossary of Terms

- **Petitions Adjudicated:** Final judgment has entered on the petition in the United States Court of Federal Claims.
- **Final Judgment:** Clerk of Court, United States Court of Federal Claims, enters judgment awarding or denying compensation.
- **Compensable:** Petitioner received an award of compensation, which can be achieved through a concession by HHS, settlement, or decision on the merits by the special master, United States Court of Federal Claims.
- **Conceded by HHS:** HHS concluded that a petition should be compensated based on review and analysis of the medical records.

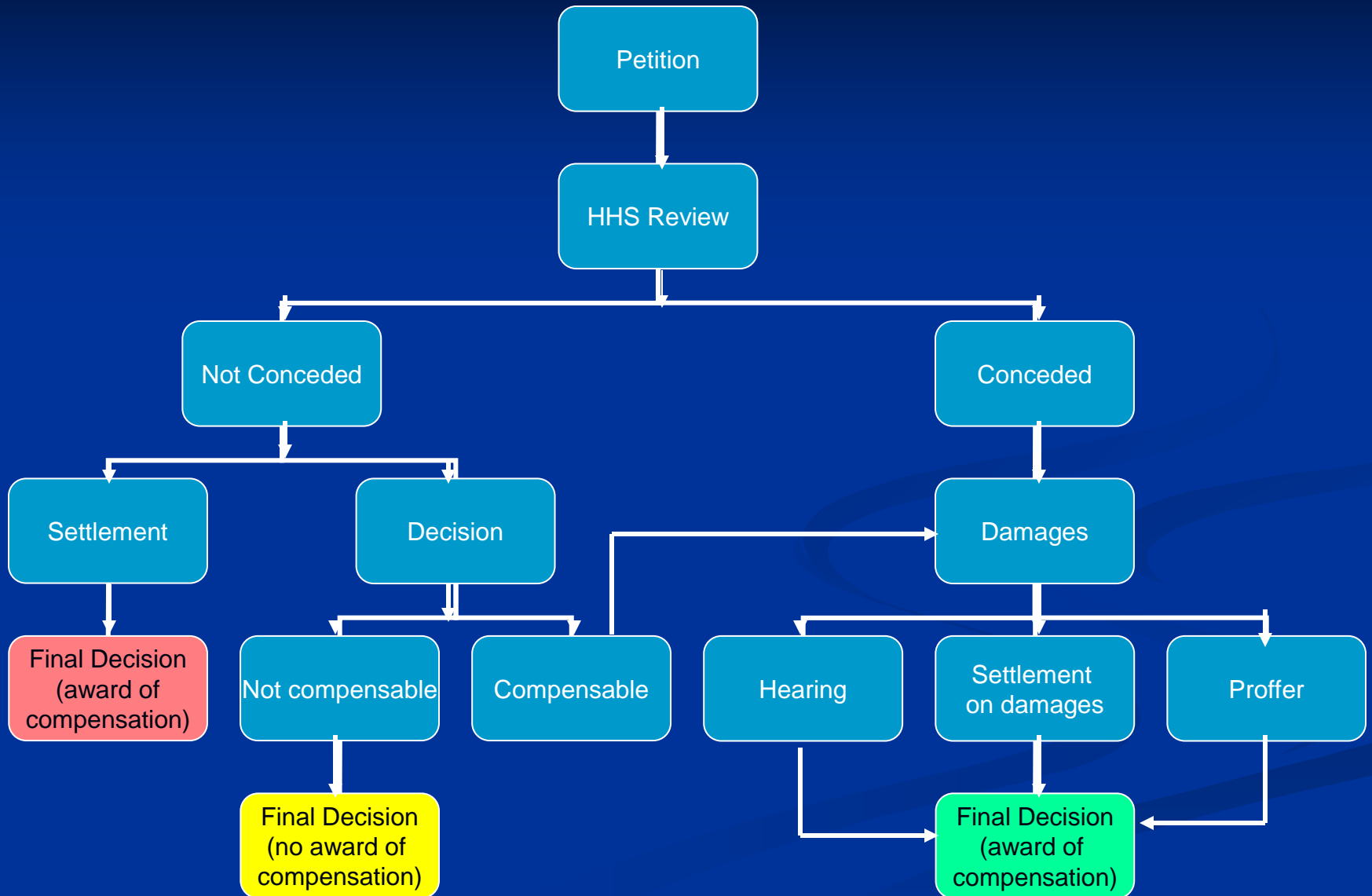
Glossary of Terms

- **Settlement:** Petition is resolved via a negotiated settlement between the parties, and results in the filing of a stipulation that memorializes the terms of the settlement.
- **Decision:** Special Master issues decision on the merits of the petition.
- **Non-compensable/Dismissed:** Petition dismissed.
- **Proffer:** After discussions between the parties regarding a reasonable amount of damages, respondent will file a suggested award of compensation, known within the Program as a “Proffer,” which is also agreed to by petitioners and their counsel. The Proffer is reviewed by the presiding special master to determine that it represents a reasonable measure of the amount of the award and describes compensation pursuant to 42 U.S.C. § 300aa-15(a). The special master issues a final decision consistent with the terms of the Proffer.⁶

Glossary of Terms

- **Affirmed:** Case has been reviewed on appeal, and the court on appeal agreed with the decision of the lower court.
- **Reversed:** Case has been reviewed on appeal, and the court on appeal disagreed with the decision of the lower court. The court on appeal typically provides reasons for reversing, and that decision becomes the law of the case, absent further appeal.
- **Remanded:** Case has been reviewed on appeal, and the reviewing court has a problem with the decision, and sends it back to the lower court. Typically, a case is remanded with a specific question or issue for the lower court to address.
- **Vacated:** Case has been reviewed on appeal, and the reviewing court has voided the lower court's decision.

Petition Processing in the Office of Special Masters



Levels of Appeal in Vaccine Act Cases

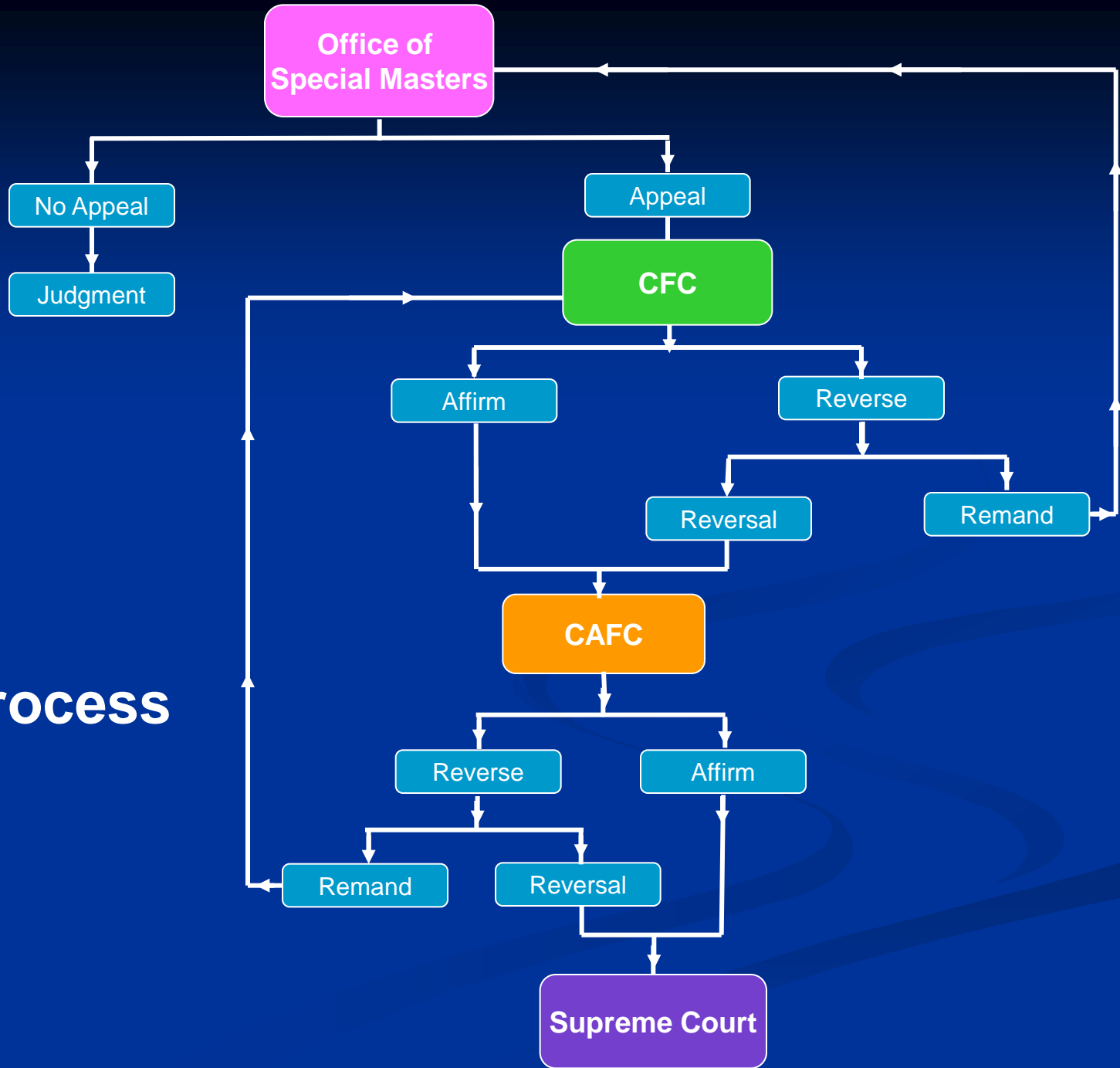
U.S. Supreme Court

**U.S. Court of Appeals for the
Federal Circuit**

U.S. Court of Federal Claims

Office of Special Masters

Appeals Process



Appeals: U.S. Supreme Court

- *Sebelius v. Cloer*, Case No. 12-236, 509 U.S. ---, 2013 WL 2149791 (U.S. May 20, 2013).
- On May 20, 2013, the Supreme Court affirmed the Federal Circuit's *en banc* decision awarding attorneys' fees and costs, holding that a person whose petition under the National Vaccine Injury Compensation Program is dismissed as untimely may recover from the United States an award of attorneys' fees and costs.

Appeals: U.S. Court of Appeals for the Federal Circuit

Recently Decided Cases

Appeals by Petitioner:

- *Shapiro v. HHS*: Affirmed (Entitlement)
- *Figueroa v. HHS*: Reversed and remanded (Jurisdiction)
- *Hrieche v. HHS*: Affirmed (Entitlement)

All decisions are available on the CAFC's website: <http://www.cafc.uscourts.gov>

Appeals: U.S. Court of Appeals for the Federal Circuit

Pending Cases

Appeals by Petitioner:

- *LaLonde v. HHS* (Entitlement)
- *Isaac v. HHS* (Entitlement)
- *Deribeaux v. HHS* (Entitlement)
- *Carson v. HHS* (Entitlement)

Appeals by Respondent:

- *Snyder v. HHS* (Entitlement)
- *Harris v. HHS* (Entitlement)
- *Tembenis v. HHS* (Damages)
- *Doe 21 v. HHS* (Entitlement)

Appeals: U.S. Court of Federal Claims

Recently Decided Cases

Appeals by Petitioner:

- *Barnette v. HHS*: Affirmed (Entitlement)
- *LaLonde v. HHS*: Affirmed (Entitlement)
- *Eisler v. HHS*: Remanded (Redaction)
- *Graves v. HHS*: Reversed and set aside (Entitlement)

All decisions are available on the CFC's website: <http://www.uscfc.uscourts.gov>

Appeals: U.S. Court of Federal Claims

Pending Cases

Appeals by Petitioner:

- *Paluck v. HHS* (Entitlement)
- *Ponzio v. HHS* (Entitlement)
- *Bast v. HHS* (Entitlement)
- *Caves v. HHS* (Attorneys' Fees and Costs)
- *Holmes v. HHS* (Entitlement)

Scheduled Oral Arguments

U.S. Court of Appeals for the Federal Circuit:

- *None scheduled at this time*

U.S. Court of Federal Claims:

- *None scheduled at this time*

Adjudicated Settlements*

Reporting Period: 2/16/13 – 5/15/13

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
Flu	Guillain-Barré Syndrome	2 years, 6 months
Flu	Guillain-Barré Syndrome	1 year, 4 months
Flu, MCV, MMR, IPV	Guillain-Barré Syndrome	5 years, 9 months
Flu, Tdap, HPV	rheumatologic and immunologic injuries	2 years, 4 months
Flu	Guillain-Barré Syndrome	1 year, 3 months
Flu	transverse myelitis	10 months
HPV	headaches, syncope, dizziness, photophobia, vomiting, and a subarachnoid hemorrhage	2 years, 2 months
Tdap	Guillain-Barré Syndrome	10 months
DTaP, HepB, Hib	acute disseminating encephalomyelitis	13 years, 9 months

*Terms of settlement are memorialized by Stipulation

Adjudicated Settlements*

Reporting Period: 2/16/13 – 5/15/13

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
Flu	Guillain-Barré Syndrome	3 years
Flu	progressive polyneuropathy	8 months
Flu	Guillain-Barré Syndrome	1 year, 9 months
MMR, MCV	Guillain-Barré Syndrome	1 year, 5 months
Tdap, Flu	chronic inflammatory demyelinating polyradiculoneuropathy	1 year, 5 months
Flu	chronic inflammatory demyelinating polyneuropathy	1 year, 4 months
Flu, Td, PCV	Guillain-Barré Syndrome	1 year, 4 months
HepB	transverse myelitis	11 months
Flu	Guillain-Barré Syndrome	9 months

*Terms of settlement are memorialized by Stipulation

Adjudicated Settlements*

Reporting Period: 2/16/13 – 5/15/13

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
MMR, Varicella	neurological injury, seizure disorder, behavioral problems	12 years, 3 months
Flu	Guillain-Barré Syndrome	1 year, 4 months
HPV	extreme and chronic fatigue and malaise; chronic vomiting; dizzy spells; vision changes characterized by blurry vision and an inability to see color; complex migraines; abdominal pain and nausea/lightheadedness; fainting spells characterized by lapses of memory and consciousness; allodynia; hives; muscle aches; breathing problems; chronic fatigue syndrome and fibromyalgia	1 year, 3 months
Flu	transverse myelitis	1 year, 2 months
Td	transverse myelitis	6 years
HPV	macrophagic myofasciitis	2 years, 11 months
Flu	brachial plexopathy/plexitis	2 years, 3 months

*Terms of settlement are memorialized by Stipulation

Adjudicated Settlements*

Reporting Period: 2/16/13 – 5/15/13

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
Flu	acute disseminated encephalomyelitis	1 year, 8 months
Flu	brachial plexopathy/plexitis	1 year, 4 months
Flu	Guillain-Barré Syndrome	3 years, 7 months
HPV	physical and neurological symptoms stemming from a significant aggravation of an underlying condition, including a somatoform disorder	1 year, 3 months
Flu	Guillain-Barré Syndrome	3 years
Td	macrophagic myofasciitis	1 year, 8 months
DTaP, IPV, Hib, PCV, RV	death	1 year, 7 months
Flu	transverse myelitis	10 months
Flu	anterior myelopathy of the left arm and shoulder, and subsequent frozen shoulder syndrome	2 years, 4 months

Adjudicated Settlements*

Reporting Period: 2/16/13 – 5/15/13

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
Flu, TDaP, HPV, MCV	fibromyalgia	2 years, 4 months
MMR	arthritis	1 year, 5 months
HepB	thrombocytopenia	2 years, 5 months
Flu	Guillain-Barré Syndrome	1 year, 5 months
Flu	Guillain-Barré Syndrome	7 months
Flu	Guillain-Barré Syndrome	4 months
Flu, HepA, HPV, MCV	acute disseminated encephalomyelitis and transverse myelitis	2 years
Flu	Guillain-Barré Syndrome	3 years, 10 months
HepA	neuropsychiatric impairment and fibromyalgia	9 months

*Terms of settlement are memorialized by Stipulation

Adjudicated Settlements*

Reporting Period: 2/16/13 – 5/15/13

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
DTaP, PCV	encephalopathy, seizure disorder, cerebral palsy	5 years, 9 months
Flu	polymyalgia rheumatica, serum sickness, immune-complex induced arthropathy, giant cell arteritis, and temporal arteritis	2 years, 6 months
Flu	Guillain-Barré Syndrome	1 year, 9 months
Flu	acute disseminated encephalomyelitis, or significant aggravation of acute disseminated encephalomyelitis	3 years
Flu	Guillain-Barré Syndrome or in the alternative chronic inflammatory demyelinating polyneuropathy	11 months
HPV	pancreatitis, blood clots	2 years
Flu	Guillain-Barré Syndrome	2 years, 3 months
Flu	autoimmune chronic urticaria	11 months
HPV	pancreatitis	5 years, 8 months

Adjudicated Settlements*

Reporting Period: 2/16/13 – 5/15/13

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
RV	pseudomonas aerungiosa	3 years, 2 months
DTaP, Hib, IPV, PCV, RV	encephalopathy, death	1 year, 8 months
Flu	Guillain-Barré Syndrome	1 year, 7 months
Flu	Guillain-Barré Syndrome	1 year, 1 month
DTaP	Guillain-Barré Syndrome	1 year, 1 month
Flu	Tourette syndrome, obsessive-compulsive disorder, and attention deficit disorder	11 months
Flu	Guillain-Barré Syndrome	6 months
Flu	Guillain-Barré Syndrome and/or chronic inflammatory demyelinating polyneuropathy	11 months
Flu	Guillain-Barré Syndrome, death	1 year, 2 months

*Terms of settlement are memorialized by Stipulation

Adjudicated Settlements*

Reporting Period: 2/16/13 – 5/15/13

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
RV	Kawasaki Disease	2 years, 11 months
Flu, MCV, IPV, DTaP, MMR, HepA, HepB	numbness, paralysis in right side and leg, splenic rupture, sciatic nerve damage, hearing loss, protruding discs, and a tear in the sacrum	2 years, 1 month
Flu	systemic symptoms, including upper respiratory infection-like symptoms, and reactive airway disease	1 year, 5 months
Flu	transverse myelitis	2 years, 7 months
HPV	seizures, a pulmonary embolism, subclavian artery thrombosis, and chronic urticaria	2 years, 4 months
HPV	neurological injuries	1 year, 11 months
DT, Flu	brachial plexopathy	1 year, 1 month
Flu	anaphylactic-type reaction, chronic pulmonary disorders, and debilitating musculoskeletal injuries	11 months
Tdap	myalgia, muscle spasms and shoulder pain	10 months

*Terms of settlement are memorialized by Stipulation

Adjudicated Settlements*

Reporting Period: 2/16/13 – 5/15/13

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
Flu	Guillain-Barré Syndrome	8 months
Flu	chronic inflammatory demyelinating polyneuropathy	7 months
Flu	Guillain-Barré Syndrome	1 year, 9 months
Flu	arthritis-like condition	2 years, 1 month
HPV	recurring difficulties with joint pain and fatigue	2 years, 8 months
Flu	rheumatologic injury	10 months
Flu	Guillain-Barré Syndrome	1 year
MCV, Tdap	acute disseminated encephalomyelitis	10 months

Total Number of Judgments Adopting Settlement this reporting period: 78

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- Discussion: settlement data mining