



**December 6, 2012**

**Vincent J. Matanoski, J.D.**  
*Deputy Director, Torts Branch*

# Statistics

Reporting Period: 8/16/12 – 11/15/12

- I. Total Petitions Filed in the United States Court of Federal Claims this reporting period: 149
  - A. Autism: 0
  - B. Non-Autism: 149
    - i. Minors: 25
    - ii. Adults: 124

# Statistics

**Reporting Period: 8/16/12 – 11/15/12**

## **II. Total Petitions Adjudicated this reporting period: 361**

### **A. Compensated: 88**

#### **i. Cases conceded by HHS: 4**

**1. Decision awarding damages: 0**

**2. Decision adopting Proffer: 4**

**3. Decision adopting Settlement: 0**

#### **ii. Cases not conceded by HHS: 84**

**1. Decision awarding damages: 0**

**2. Decision adopting Proffer: 3**

**3. Decision adopting Settlement: 81**

### **B. Not Compensated/Dismissed: 273**

**i. Decision dismissing Non-Autism: 50**

**ii. Decision dismissing Autism: 223**

# Statistics

Reporting Period: 8/16/12 – 11/15/12

**III. Total Petitions Voluntarily Withdrawn this reporting period (no judgment will be issued): 6**

A. Non-Autism: 4

B. Autism: 2

# 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.

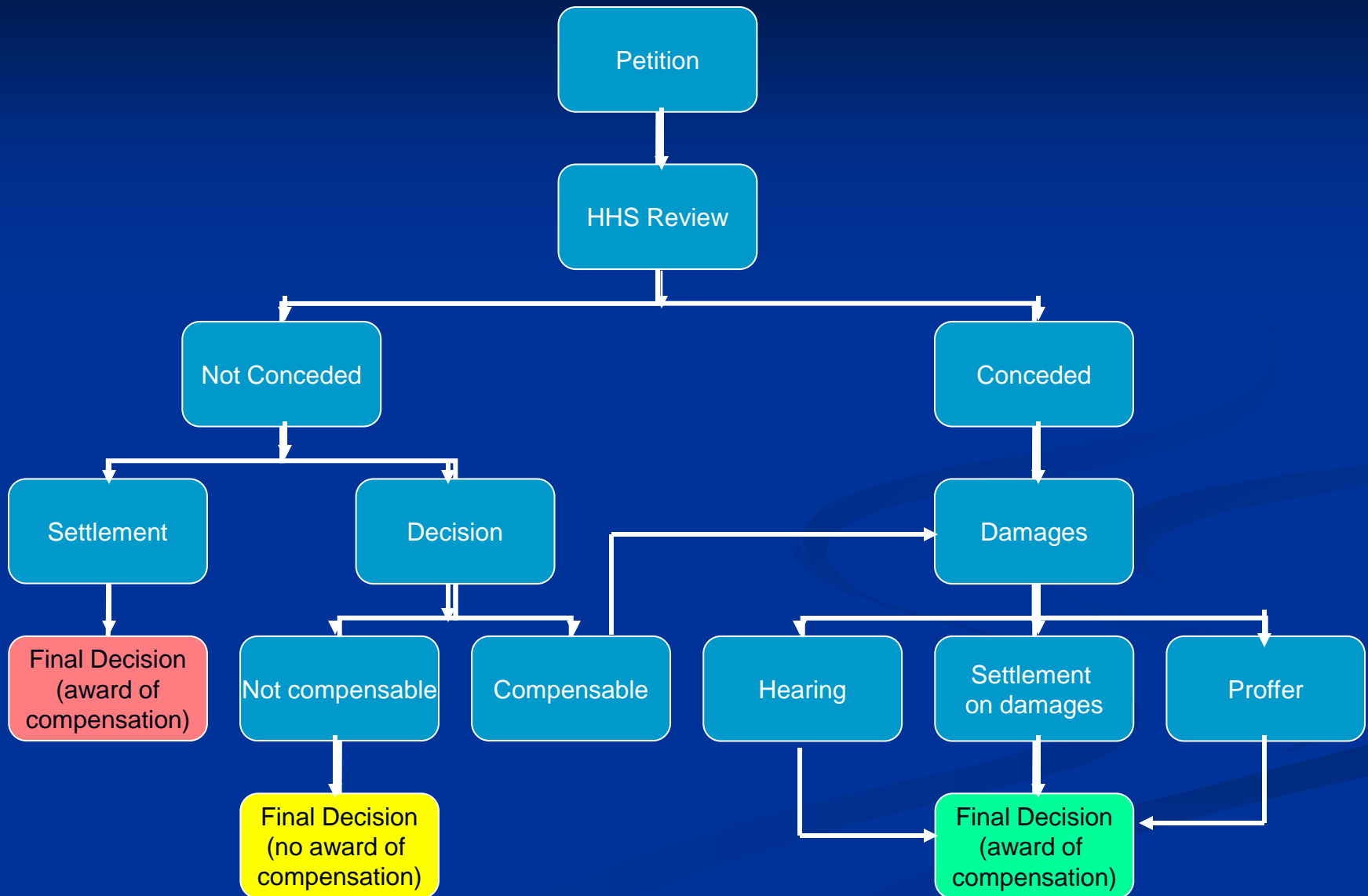
# Glossary of Terms

- **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.<sup>6</sup>

# 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

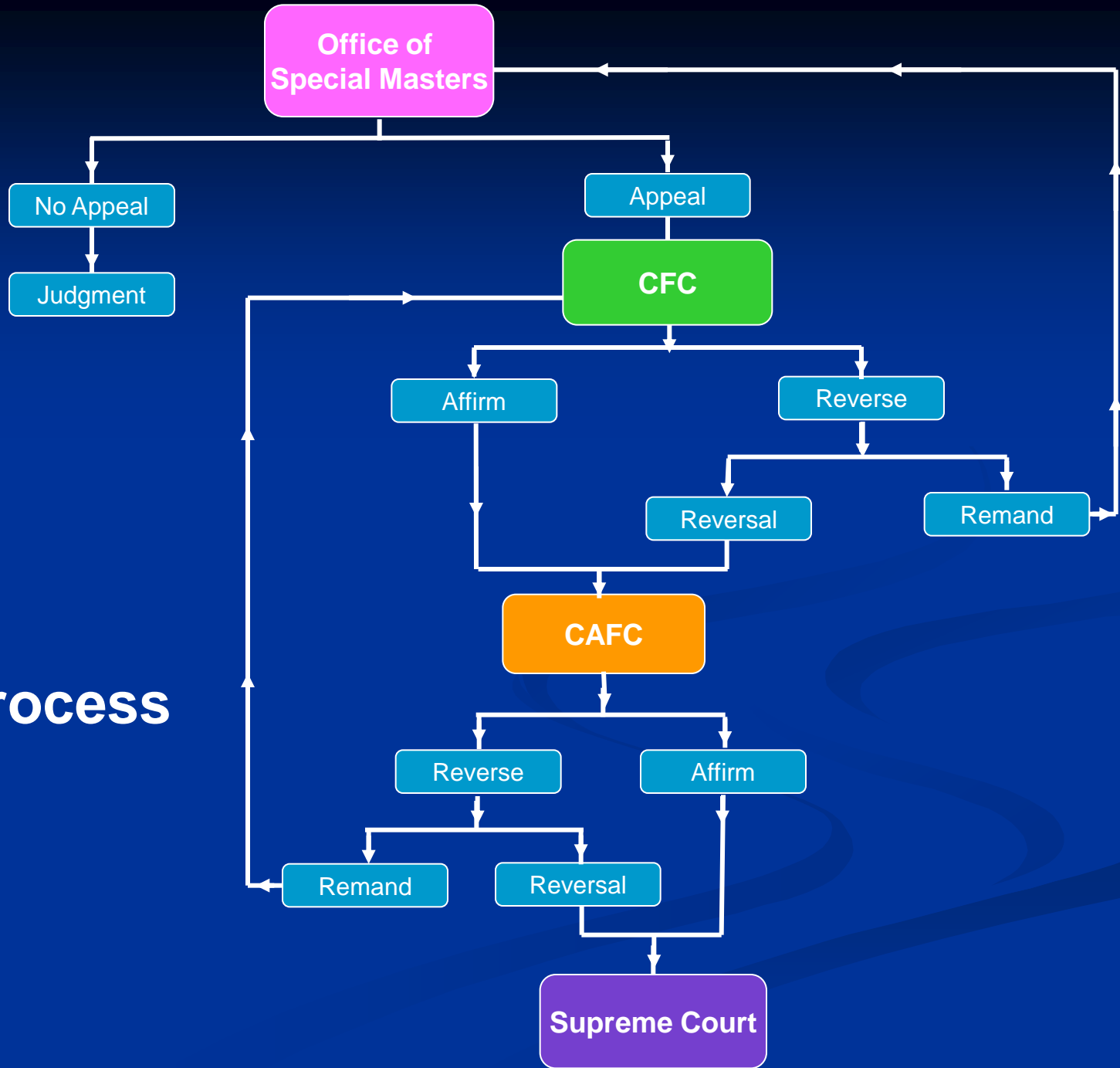
**U.S. Supreme Court**

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

**U.S. Court of Federal Claims**

**Office of Special Masters**

# Appeals Process



## ■ ***Sebelius v. Cloer***

- HHS appealed the Federal Circuit's 7-6 *en banc* decision regarding attorneys' fees and costs (675 F.3d 1358 (Fed. Cir. 2012))
- The Supreme Court granted the petition for a writ of certiorari on November 20, 2012
- Question Presented: Whether 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: CAFC

*Recently Decided Cases at the U.S. Court of Appeals for the Federal Circuit:*

## Appeals by Petitioner:

- *Hibbard v. HHS*: Affirmed (2-1) (Entitlement)
- *Kennedy v. HHS*: Affirmed per curiam (Entitlement/Relief from Prior Judgment)
- *Argueta v. HHS*: Affirmed per curiam (Entitlement)

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

# Appeals: CAFC

## *Pending Cases at the U.S. Court of Appeals for the Federal Circuit:*

### Appeals by Petitioner:

- *Hrieche v. HHS* (Entitlement)
- *Shapiro v. HHS* (Entitlement)
- *Deribeaux v. HHS* (Entitlement)
- *Figueroa v. HHS* (Jurisdiction)
- *Connor v. HHS* (Entitlement)
- *Carson v. HHS* (Entitlement)

### Appeals by Respondent:

- *Doe 21 v. HHS* (Entitlement)

# Appeals: CFC

*Recently Decided Cases at the U.S. Court of Federal Claims:*

## Appeals by Petitioner:

- *Masias v. HHS*: Remanded (Attorneys' Fees and Costs)
- *Contreras v. HHS*: Vacated, Remanded (Entitlement)
- *Vaughan v. HHS*: Affirmed (Entitlement)

## Appeals by Respondent:

- *Tembenis v. HHS*: Affirmed (Damages)

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

# Appeals: CFC

## *Pending Cases at the U.S. Court of Federal Claims:*

### Appeals by Petitioner:

- *Barnette v. HHS* (Entitlement)
- *Taylor v. HHS* (Entitlement)
- *LaLonde v. HHS* (Entitlement)
- *Arango v. HHS* (Entitlement)
- *Wax v. HHS* (Entitlement)
- *Isaac v. HHS* (Entitlement)
- *Silva v. HHS* (Attorneys' Fees and Costs)
- *Graves v. HHS* (Entitlement)
- *Holmes v. HHS* (Entitlement)
- *Langland v. HHS* (Entitlement)

### Appeals by Respondent:

- *Hiland v. HHS* (Interim Attorneys' Fees and Costs)

# 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: 8/16/12 – 11/15/12

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
Influenza	Motor neuron disease (brachial neuritis, Parsonage-Turner Syndrome)	2 years, 11 months
Influenza	Allergic reaction with numerous symptoms and a progressive upper respiratory infection that developed into bronchitis	11 months
Influenza	Guillain-Barré Syndrome	2 years, 2 months
Influenza	Guillain-Barré Syndrome and/or Chronic Inflammatory Demyelinating Polyneuropathy	1 year, 11 months
Influenza	Guillain-Barré Syndrome	1 year, 11 months
Influenza	Guillain-Barré Syndrome	1 year, 1 month
Influenza	Acute demyelinating encephalomyelitis	3 years
Influenza	Guillain-Barré Syndrome	8 months
Influenza	Guillain-Barré Syndrome	3 years, 2 months
Influenza	Guillain-Barré Syndrome	1 year, 1 month

\*Terms of settlement are memorialized by Stipulation

(continued . . .)

# Adjudicated Settlements\*

Reporting Period: 8/16/12 – 11/15/12

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
Influenza	Acute encephalopathy, demyelinating encephalomyelitis, brain lesions, and related neurological symptoms	1 year, 1 month
Influenza	Guillain-Barré Syndrome	8 months
Influenza	Guillain-Barré Syndrome	1 year, 9 months
Influenza	Neuropathy and/or myelopathy	1 year, 7 months
Influenza	Guillain-Barré Syndrome	1 year, 3 months
Influenza	Guillain-Barré Syndrome	1 year, 1 month
DTaP, Hib, Prevnar	Disorientation, anaphylactic shock, complications of the digestive system, encephalitis, violent convulsions, irreversible brain damage, death	3 years, 6 months
Varciella	Multiple Sclerosis, Graves Disease, and fibromyalgia	3 years
Influenza	Guillain-Barré Syndrome	10 months
Hep A	Guillain-Barré Syndrome	1 year, 2 months

terms of settlement are memorialized by stipulation

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# Adjudicated Settlements\*

Reporting Period: 8/16/12 – 11/15/12

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
Influenza	Guillain-Barré Syndrome	1 year, 2 months
Influenza	Guillain-Barré Syndrome	1 year, 5 months
DTaP	Leukocytoclastic Vasculitis	7 months
Influenza	Guillain-Barré Syndrome	4 years, 11 months
Hep B, Influenza	Adverse reaction resulting in neuralgias	2 years, 9 months
Influenza	Aplastic anemia	1 year, 11 months
HPV, Varicella	Significant, permanent, residual, neurological defects	1 year, 9 months
Influenza	Guillain-Barré Syndrome	2 years, 10 months
Rotavirus	Recurrent intussusception	2 years, 9 months
Influenza	Guillain-Barré Syndrome	1 year, 3 months

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(continued . . .)

# Adjudicated Settlements\*

Reporting Period: 8/16/12 – 11/15/12

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
Pentacel, Hep B, Prevnar	Necrotizing gastroenteritis, pneumatosis, and bloody stools	4.5 months
Hep B	Inflammatory arthritis	2 years, 11 months
MMR	Acute disseminated encephalomyelitis	7 months
Influenza	Chronic inflammatory demyelinating polyneuropathy	2 years, 11 months
Hep A, Hep B	Transverse myelitis	2 years, 2 months
HPV, meningococcal, varicella	Hashimoto's thyroiditis	1 year, 3 months
Hep B, DTaP, Pneumococcal conjugate, and Hib	Transverse myelitis	2 years, 5 months

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# Adjudicated Settlements\*

Reporting Period: 8/16/12 – 11/15/12

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
Influenza	Peripheral neuropathy	3 years, 1 month
Influenza	Guillain-Barré Syndrome	11 months
Influenza	Guillain-Barré Syndrome	9 months
Hep A, Hep B, Tetanus	Transverse myelitis	2 years, 2 months
Influenza	Transverse myelitis	5 years, 3 months
Influenza	Guillain-Barré Syndrome	2 years, 11 months
DTaP	Guillain-Barré Syndrome	2 years, 5 months
Influenza	Guillain-Barré Syndrome	2 years
Tdap	Brachial neuritis	1 year, 8 months
Influenza	Transverse myelitis	3 years, 7 months

\*Terms of settlement are memorialized by Stipulation

(continued . . .)

# Adjudicated Settlements\*

Reporting Period: 8/16/12 – 11/15/12

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
Influenza	Neurological injuries	1 year, 11 months
IPV, DTaP, Rotavirus, Hib, PCV	Immobile, flaccid legs	10 months
Influenza	Guillain-Barré Syndrome	8 months
Influenza	Guillain-Barré Syndrome	2 years, 9 months
DTaP, Hep B, IPV, Hib, Rotavirus	death	2 years, 4 months
Influenza	Guillain-Barré Syndrome	2 years, 8 months
Influenza	Guillain-Barré Syndrome	2 years, 4 months
Tdap	Guillain-Barré Syndrome	2 years, 2 months
Influenza	Encephalitis	2 years, 2 months

\*Terms of settlement are memorialized by Stipulation

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# Adjudicated Settlements\*

Reporting Period: 8/16/12 – 11/15/12

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
Influenza	Transverse myelitis	2 years
DTaP, Hib, IPV, PCV, Hep B, and Rotavirus	death	1 year, 9 months
Varicella	Ataxia	1 year, 3 months
HPV	Guillain-Barré Syndrome	2 years, 4 months
Influenza	Transverse myelitis	1 year, 6 months
Influenza	Optic neuritis	11 months
Tdap	Guillain-Barré Syndrome	7 months
HPV	Peripheral demyelinating polyneuropathy	2 years, 8 months
MMR, Hep B, Hib, Varicella	Neurologic injuries, encephalitis, and a seizure disorder	2 years, 4 months

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# Adjudicated Settlements\*

Reporting Period: 8/16/12 – 11/15/12

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
Influenza	Acute inflammatory polyradiculopathy	2 years
Influenza	Guillain-Barré Syndrome	1 year, 6 months
DTaP, Hep A	Serum sickness consisting of fever, recurring hives and welts, itching, and joint swelling, resulting in an undetermined autoimmune condition	1 year, 8 months
HPV	Idiopathic thrombocytopenic purpura	1 year, 11 months
Influenza	Demyelinating polyneuritis	1 year, 8 months
Td	Brachial neuritis	1 year, 11 months
Influenza	Guillain-Barré Syndrome	1 year, 7 months
Influenza	Guillain-Barré Syndrome	1 year, 7 months
Influenza	Guillain-Barré Syndrome	11 months
Influenza	Transverse myelitis	3 years, 1 month

\*Terms of settlement are memorialized by Stipulation



# Adjudicated Settlements\*

Reporting Period: 8/16/12 – 11/15/12

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
Menactra, Hep A, Varicella, HPV	Guillain-Barré Syndrome	2 years, 7 months
Tdap, HPV, meningococcal	Acute disseminated encephalomyelitis	1 year, 9 months
HPV	Acute disseminated encephalomyelitis	1 year, 4 months
Influenza	Guillain-Barré Syndrome	4 years, 10 months
Influenza	Guillain-Barré Syndrome	11 months
Influenza	Guillain-Barré Syndrome	10 months

*Total Number of Judgments Adopting Settlement this reporting period: 81*