



# Report from the Department of Justice

September 5, 2013

**Vincent J. Matanoski, J.D.**

*Deputy Director, Torts Branch*

# Statistics

Reporting Period: 5/16/13 – 8/15/13

- I. Total Petitions Filed in the United States Court of Federal Claims this reporting period: 113
  - A. Autism: 0
  - B. Non-Autism: 113
    - i. Minors: 27
    - ii. Adults: 86

# Statistics

**Reporting Period: 5/16/13 – 8/15/13**

## **II. Total Petitions Adjudicated this reporting period: 120**

**A. Compensated: 88**

**i. Cases conceded by HHS: 9**

**1. Decision awarding damages: 0**

**2. Decision adopting Proffer: 9**

**3. Decision adopting Settlement: 0**

**ii. Cases not conceded by HHS: 79**

**1. Decision awarding damages: 1**

**2. Decision adopting Proffer: 1**

**3. Decision adopting Settlement: 77**

**B. Not Compensated/Dismissed: 32**

**i. Decision dismissing Non-Autism: 13**

**ii. Decision dismissing Autism: 19**

# Statistics

Reporting Period: 5/16/13 – 8/15/13

**III. Total Petitions Voluntarily Withdrawn this reporting period (no judgment will be issued): 1**

A. Non-Autism: 1

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.

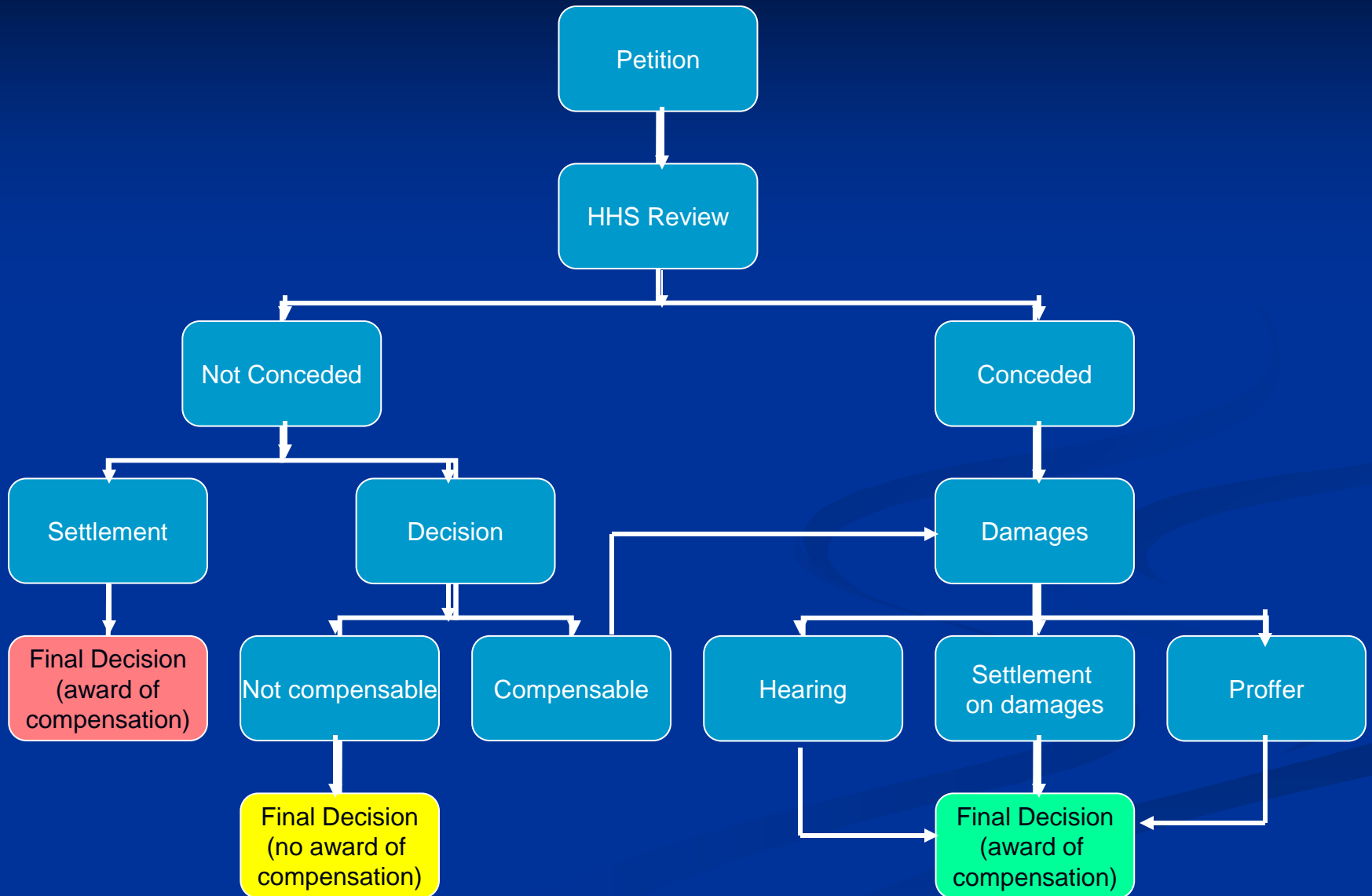
# Glossary of Terms

- **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.<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

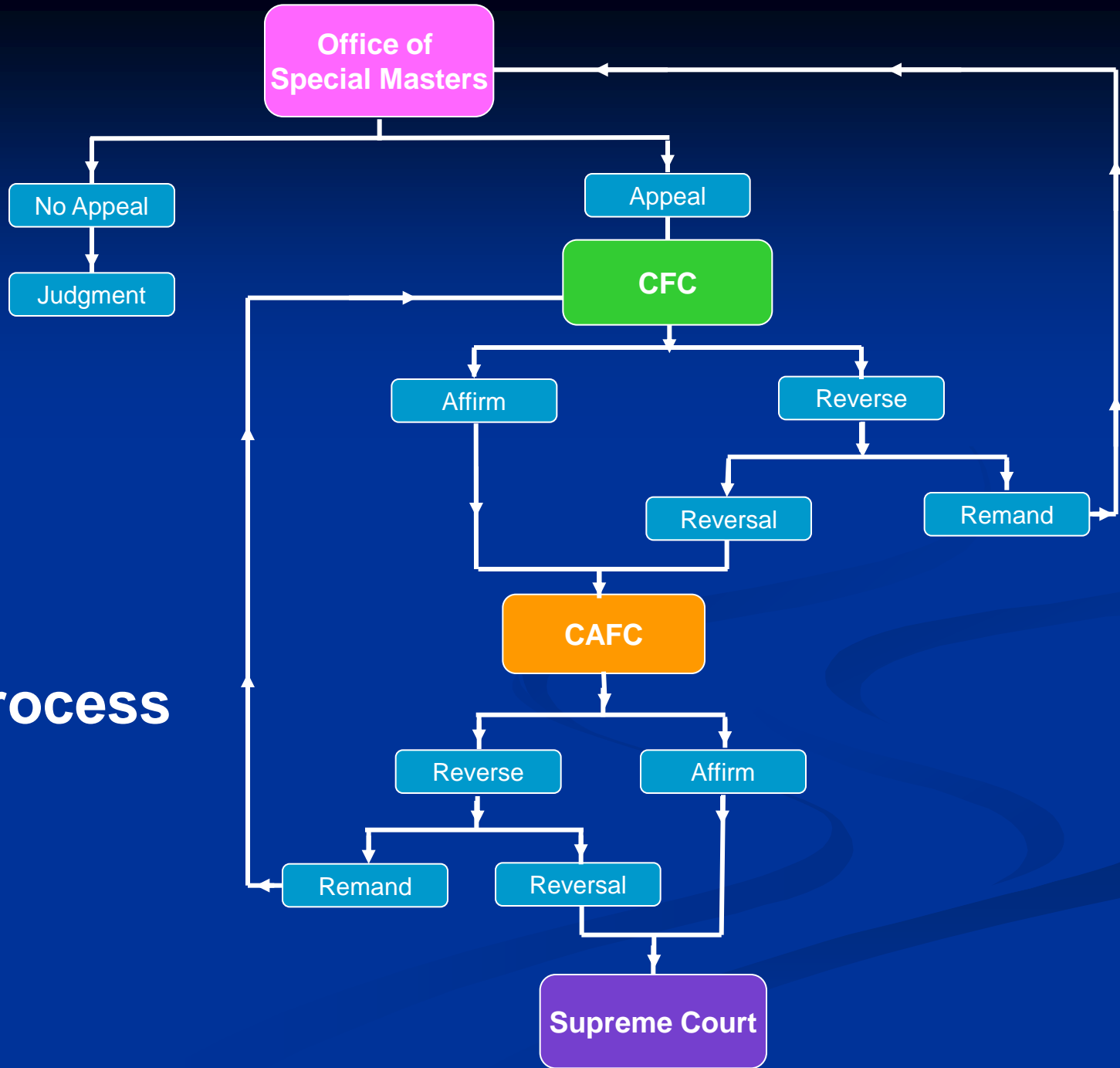
**U.S. Supreme Court**

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

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

**Office of Special Masters**

# Appeals Process



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

## Recently Decided Cases

### Appeals by Petitioner:

- *Deribeaux v. HHS*: Affirmed (Entitlement)

### Appeals by Respondent:

- *Paterek v. HHS*: Reversed and remanded (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)
- *Carson v. HHS* (Entitlement)

### Appeals by Respondent:

- *Dobrydnev v. HHS* (Entitlement)
- *Snyder v. HHS* (Entitlement)
- *Harris v. HHS* (Entitlement)
- *Tembenis v. HHS* (Entitlement)

# Appeals: U.S. Court of Federal Claims

## Recently Decided Cases

### Appeals by Petitioner:

- *Ponzio v. HHS*: Affirmed (Entitlement)
- *Caves v. HHS*: Affirmed (Attorneys' Fees and Costs)

*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:

- *Dillon v. HHS* (Entitlement)
- *Tompkins v. HHS* (Entitlement)
- *Stillwell v. HHS* (Entitlement)
- *Dodd v. HHS* (Entitlement)
- *Koehn v. HHS* (Entitlement)
- *Paluck v. HHS* (Entitlement)
- *Bast v. HHS* (Entitlement)
- *Holmes v. HHS* (Entitlement)

# Scheduled Oral Arguments

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

- *Tembenis v. HHS*: September 12, 2013

## U.S. Court of Federal Claims:

- *Koehn v. HHS*: October 15, 2013

# Adjudicated Settlements\*

Reporting Period: 5/16/13 – 8/15/13

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
Flu	Guillain-Barré Syndrome	1 year, 3 months
Flu	Guillain-Barré Syndrome	9 months
Flu	Myelopathy and radiculopathy, or in the alternative, significant aggravation of an underlying immunologic, neurologic, or genetic condition	3 years, 7 months
Flu, Tdap, MCV, IPV, Hep A, Hep B	Guillain-Barré Syndrome	1 year, 8 months
Flu	Guillain-Barré Syndrome	11 months
Tdap, Varicella, MCV	Acute disseminated encephalomyelitis, chiari malformation, and optic neuritis	11 months
Hep B, IPV, DTaP, Hib, PCV, RV	Death	3 years, 10 months
Flu	Guillain-Barré Syndrome	7 months



# Adjudicated Settlements\*

Reporting Period: 5/16/13 – 8/15/13

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
Flu	Psoriasis and psoriatic arthritis	3 years, 3 months
Flu	Guillain-Barré Syndrome	9 months
Flu	Chronic inflammatory demyelinating polyneuropathy	11 months
MCV	Jaw pain, bilateral Bell's palsy, joint stiffness, myalgia, sensory neuropathy, retinal vasculitis, hypertension	11 months
Flu	Skin rash, fatigue, and scarring	6 months
Flu	Chronic inflammatory demyelinating polyneuropathy	1 year, 8 months
Flu	Guillain-Barré Syndrome	7 months
HPV	Joint pain, muscle pain, numbness of the hands and feet, fatigue, hair loss, weight loss, night sweats, difficulty sleeping, and mouth sores	2 years, 9 months
MCV	Neurological injury	1 year, 7 months

\*Terms of settlement are memorialized by Stipulation

(continued . . .)

# Adjudicated Settlements\*

Reporting Period: 5/16/13 – 8/15/13

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
MMR, Td	Antisynthetase Syndrome	3 years, 7 months
Hep B, IPV, Td	Acute disseminating encephalomyelitis	2 years, 1 month
Flu	Guillain-Barré Syndrome	1 year, 8 months
Flu	Brachial neuritis	1 year
Flu	Shoulder injury related to vaccine administration	9 months
Flu	Guillain-Barré Syndrome	7 months
HPV	Severe abdominal pain and other symptoms	2 years, 9 months
Flu	Autoimmune demyelinating condition	1 year, 7 months
Flu	Guillain-Barré Syndrome	11 months

\*Terms of settlement are memorialized by Stipulation

# Adjudicated Settlements\*

Reporting Period: 5/16/13 – 8/15/13

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
Flu, DTaP, MMR, Varicella, Hib, PCV	Seizure disorder	1 year, 4 months
Flu	Guillain-Barré Syndrome	1 year, 3 months
Flu	Guillain-Barré Syndrome	1 year
DT	Adverse reaction	1 year, 3 months
Flu	Guillain-Barré Syndrome	1 year, 3 months
Flu	Guillain-Barré Syndrome	8 months
RV	Intussusception	5 months
Flu	Guillain-Barré Syndrome	9 months
HPV	Rheumatoid arthritis, systemic lupus erythematosus, connective tissue disorder, and mixed connective tissue disorder	3 years, 5 months

# Adjudicated Settlements\*

Reporting Period: 5/16/13 – 8/15/13

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
Flu	Bursitis	1 year, 7 months
HPV	Chronic neutrophilic urticaria	1 year, 4 months
Flu	Chronic inflammatory demyelinating polyneuropathy	1 year, 4 months
DTaP, MMR, IPV, Varicella	Acute disseminated encephalomyelitis and other adverse injuries	1 year, 1 month
Tdap, MCV, Hep A	Guillain-Barré Syndrome	12 months
Flu	Bell's palsy and urticaria/angioedema	10 months
Hep B, IPV, DTaP, Hib, PCV, RV	Neurological abnormalities, manifesting as seizures and dystonia	2 years, 10 months
Flu	Guillain-Barré Syndrome	5 months
MMR, DTaP, IPV	Devic's Disease and neuromyelitis optica	8 years, 11 months

# Adjudicated Settlements\*

Reporting Period: 5/16/13 – 8/15/13

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
Flu	Bilateral brachial neuritis	1 year, 3 months
Flu	Guillain-Barré Syndrome and Chronic inflammatory demyelinating polyneuropathy	4 years, 9 months
Flu	Significant aggravation of underlying COPD and other pulmonary conditions, death	1 year
Td	Systemic lupus erythematosus	3 years, 3 months
Flu	Meningoencephalitis and optic neuritis	1 year, 8 months
DTaP, IPV, Hib, PCV, Hep B	Grand mal seizure and an intractable seizure disorder, death	6 years, 4 months
Flu	Transverse myelitis	1 year, 1 month
Flu	Guillain-Barré Syndrome	9 months
Flu	Neurologic injuries, including Bell's Palsy	10 months

\*Terms of settlement are memorialized by Stipulation

# Adjudicated Settlements\*

Reporting Period: 5/16/13 – 8/15/13

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
Td	Guillain-Barré Syndrome	2 years, 6 months
Flu	Guillain-Barré Syndrome	1 year, 5 months
DTaP, Hib, IPV, PCV	Deterioration of physical condition	7 months
Flu	Chronic inflammatory demyelinating polyneuropathy	4 years, 2 months
Flu	Chronic inflammatory demyelinating polyneuropathy	2 years, 9 months
Flu	Guillain-Barré Syndrome	1 year, 8 months
Td	Guillain-Barré Syndrome	1 year, 5 months
HPV, Tdap, Varicella, MCV	Immunological injury, and/or a reactivation of a latent herpes simplex virus infection	3 years, 8 months
Flu	Brachial plexus neuritis	9 months

# Adjudicated Settlements\*

Reporting Period: 5/16/13 – 8/15/13

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
Flu	Serum sickness and pain amplification syndrome of childhood/fibromyalgia	1 year, 10 months
Flu, Td	Cerebrovascular accident and associated neurologic injuries	9 months
Flu	Acute disseminated encephalomyelitis	1 year, 9 months
Flu	Guillain-Barré Syndrome	10 months
Flu	Guillain-Barré Syndrome	3 years, 9 months
Tdap	Guillain-Barré Syndrome	2 years, 1 month
Flu	Guillain-Barré Syndrome	1 year, 5 months
PCV, Hep A, Varicella	Seizure and a stroke	1 year, 2 months
Flu	Guillain-Barré Syndrome	2 years, 5 months

\*Terms of settlement are memorialized by Stipulation

# Adjudicated Settlements\*

Reporting Period: 5/16/13 – 8/15/13

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
Tdap	Bilateral symmetric diaphragmatic palsy and demyelination of the phrenic nerve	1 year, 8 months
Tdap	Guillain-Barré Syndrome	1 year, 5 months
Flu	Guillain-Barré Syndrome	1 year
Flu	Rheumatoid arthritis	9 months
Flu	Guillain-Barré Syndrome	8 months
Hib, PCV	Limp, thigh swelling, myositis, periostitis, left femoral osteomyelitis with febrile illness, and a possible periosteal abscess	6 months

**Total Number of Judgments Adopting Settlement this reporting period: 77**

\*Terms of settlement are memorialized by Stipulation