



## Report from the Department of Justice

June 6, 2019

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## Statistics

Reporting Period: 2/16/19 – 5/15/19

### I. Total Petitions Filed in the United States Court of Federal Claims this Reporting Period: 287

A. Minors: 9

B. Adults: 278

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## Statistics

Reporting Period: 2/16/19 – 5/15/19

### II. Total Petitions Adjudicated this Reporting Period: 191

#### A. Compensated: 144

##### i. Cases conceded by HHS: 61

1. Decision awarding damages: 3

2. Decision adopting Proffer: 58

3. Decision adopting Settlement: 0

##### ii. Cases not conceded by HHS: 83

1. Decision awarding damages: 5

2. Decision adopting Proffer: 0

3. Decision adopting Settlement: 78

#### B. Not Compensated/Dismissed: 47

##### i. Decision dismissing Non-OAP: 47

##### ii. Decision dismissing OAP: 0

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## Statistics

Reporting Period: 2/16/19 – 5/15/19

### III. Total Petitions Voluntarily Withdrawn this Reporting Period (no judgment will be issued): 5

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

### Decided Cases

#### Appeals by Petitioner:

- *McCullum v. HHS* (Entitlement): Affirmed
- *Miles v. HHS* (Entitlement): Affirmed
- *R.K. v. HHS* (Attys' Fees & Costs): Affirmed

#### Appeals by Respondent:

- *McCulloch v. HHS* (Attys' Fees & Costs): Affirmed

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

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

### Pending Cases

#### Appeals by Petitioner:

- *Austin v. HHS* (Entitlement)
- *Boatmon v. HHS* (Entitlement)
- *Byrd v. HHS* (Entitlement)
- *Cottingham v. HHS* (Attys' Fees & Costs)
- *Gaiter v. HHS* (Entitlement)
- *K.G. v. HHS* (Entitlement)
- *Kreizenbeck v. HHS* (Entitlement)
- *Moczek v. HHS* (Entitlement)
- *Sanchez v. HHS* (Entitlement)

\*Yellow cases are new this reporting period

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## Appeals: U.S. Court of Federal Claims

### Decided Cases

#### Appeals by Petitioner:

- *Heddens v. HHS* (Entitlement): Affirmed
- *L.M. v. HHS* (Entitlement): Affirmed
- *Maciel v. HHS* (Entitlement): Affirmed

#### Appeals by Respondent:

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

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

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## Appeals: U.S. Court of Federal Claims

### Pending Cases

#### Appeals by Petitioner:

- *Braun v. HHS* (Entitlement)
- *Chinea v. HHS* (Entitlement)
- *Christner v. HHS* (Entitlement)
- *E.J. v. HHS* (Attys' Fees & Costs)
- *L.P. v. HHS* (Attys' Fees & Costs)
- *Mullen v. HHS* (Attys' Fees & Costs)
- *Noe v. HHS* (Entitlement)
- *Nunez v. HHS* (Entitlement)
- *Webb v. HHS* (Entitlement)
- *Wright v. HHS* (Entitlement)
- *Wyatt v. HHS* (Entitlement)

\*Yellow cases are new this reporting period

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## Appeals: U.S. Court of Federal Claims

### Pending Cases

#### Appeals by Petitioner:

- *Yalacki v. HHS* (Entitlement)
- *Zumwalt v. HHS* (Entitlement)

#### Appeals by Respondent:

- *Lozano v. HHS* (Entitlement)

\*Yellow cases are new this reporting period 9

## Scheduled Oral Arguments

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

- *Boatmon v. HHS* on 7/9/2019

### U.S. Court of Federal Claims:

- *Zumwalt v. HHS* on 6/17/2019

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## Adjudicated Settlements\*

Reporting Period: 2/16/19 – 5/15/19

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
1. Hep A	CIDP	3 Years 11 Months
2. Flu; DTaP	Eczema	3 Years 3 Months
3. Meningococcal	Autoimmune Encephalitis	2 Years 10 Months
4. TDaP	GBS; CIDP; Bell's Palsy	2 Years 10 Months
5. Flu	TM	2 Years 7 Months
6. Flu	Polymyalgia Rheumatica	2 Years 6 Months
7. Flu	TM	2 Years 6 Months
8. MMR; Varicella	Shingles	2 Years 6 Months
9. Flu	SIRVA	2 Years 4 Months
10. Flu	SIRVA	2 Years 4 Months
11. Flu	TM	2 Years 3 Months

\*Terms of compensated settlements memorialized by Stipulation

## Adjudicated Settlements\*

Reporting Period: 2/16/19 – 5/15/19

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
12. Hep A	SIRVA	2 Years 3 Months
13. PCV	SIRVA	2 Years 2 Months
14. Flu	SIRVA	2 Years 2 Months
15. TDaP	SIRVA	2 Years 1 Month
16. Flu	GBS; CIDP; Paraparesis; Hypoxic Respiratory Failure; Ischemia; Myocardial Infarctions; Pleural Effusions; Pericardial Effusion; and Congestive Heart Failure	2 Years 1 Month
17. Flu	SIRVA	2 Years 1 Month
18. Flu	GBS; CIDP	2 Years 1 Month
19. Flu	SIRVA	2 Years 1 Month
20. TDaP	SIRVA	2 Years
21. Flu	SIRVA	2 Years
22. Flu	TM	1 Year 11 Months

\*Terms of compensated settlements memorialized by Stipulation

## Adjudicated Settlements\*

Reporting Period: 2/16/19 – 5/15/19

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
23. Flu	GBS	1 Year 11 Months
24. Flu	SIRVA	1 Year 11 Months
25. Flu	SIRVA	1 Year 11 Months
26. Flu	Brachial Plexopathy	1 Year 11 Months
27. Flu	GBS	1 Year 11 Months
28. Flu	SIRVA	1 Year 10 Months
29. TDaP	SIRVA	1 Year 9 Months
30. Flu; Pneumococcal 13-valent Conjugate	CIDP	1 Year 9 Months
31. Flu	GBS	1 Year 9 Months
32. Flu	TM	1 Year 9 Months
33. Flu	SIRVA	1 Year 8 Months
*Terms of compensated settlements memorialized by Stipulation		

## Adjudicated Settlements\*

Reporting Period: 2/16/19 – 5/15/19

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
34. Flu	SIRVA	1 Year 8 Months
35. Flu	GBS	1 Year 8 Months
36. Flu	SIRVA	1 Year 7 Months
37. Flu	Vasculitis	1 Year 7 Months
38. Flu	SIRVA	1 Year 7 Months
39. Flu	SIRVA	1 Year 7 Months
40. Flu	GBS	1 Year 6 Months
41. Flu	GBS	1 Year 6 Months
42. Flu; Pneumococcal 13-valent Conjugate	ADEM	1 Year 6 Months
43. Flu	SIRVA	1 Year 6 Months
44. Flu	SIRVA	1 Year 6 Months
*Terms of compensated settlements memorialized by Stipulation		

## Adjudicated Settlements\*

Reporting Period: 2/16/19 – 5/15/19

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
45. Flu	GBS	1 Year 6 Months
46. Flu	SIRVA	1 Year 6 Months
47. Flu	SIRVA	1 Year 6 Months
48. Flu	SIRVA	1 Year 6 Months
49. Flu	SIRVA	1 Year 6 Months
50. Flu	SIRVA	1 Year 5 Months
51. Flu	GBS	1 Year 5 Months
52. Flu	SIRVA	1 Year 5 Months
53. Flu	SIRVA	1 Year 5 Months
54. Flu	SIRVA	1 Year 5 Months
55. Pneumococcal 13-valent Conjugate	SIRVA	1 Year 5 Months
*Terms of compensated settlements memorialized by Stipulation		

## Adjudicated Settlements\*

Reporting Period: 2/16/19 – 5/15/19

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
56. TDaP	Diphtheria Acellular-Pertussis	1 Year 5 Months
57. Flu	SIRVA	1 Year 4 Months
58. Flu	SIRVA	1 Year 4 Months
59. Rotavirus Vaccine	Intussusception	1 Year 4 Months
60. Hep A	SIRVA	1 Year 4 Months
61. TDaP	TM	1 Year 4 Months
62. Hep B	SIRVA	1 Year 4 Months
63. Rotavirus Vaccine	Intussusception	1 Year 4 Months
64. Flu	SIRVA	1 Year 4 Months
65. Flu	SIRVA	1 Year 4 Months
66. Flu	SIRVA	1 Year 3 Months
*Terms of compensated settlements memorialized by Stipulation		

## Adjudicated Settlements\*

Reporting Period: 2/16/19 – 5/15/19

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
67. DTaP; Hep A	Febrile Seizures; Encephalitis	1 Year 3 Months
68. Flu	SIRVA	1 Year 3 Months
69. TDaP	SIRVA	1 Year 3 Months
70. Flu	SIRVA	1 Year 3 Months
71. Flu	SIRVA	1 Year 3 Months
72. TDaP	GBS	1 Year 2 Months
73. Flu	SIRVA	1 Year 2 Months
74. Flu	SIRVA	1 Year 2 Months
75. TDaP	SIRVA	12 Months
76. Flu	SIRVA	12 Months
77. Flu	SIRVA	11 Months
*Terms of compensated settlements memorialized by Stipulation		

## Adjudicated Settlements\*

Reporting Period: 2/16/19 – 5/15/19

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
78. Flu	SIRVA	11 Months
*Terms of compensated settlements memorialized by Stipulation		

## Appendix

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## 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.

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## Glossary of Terms

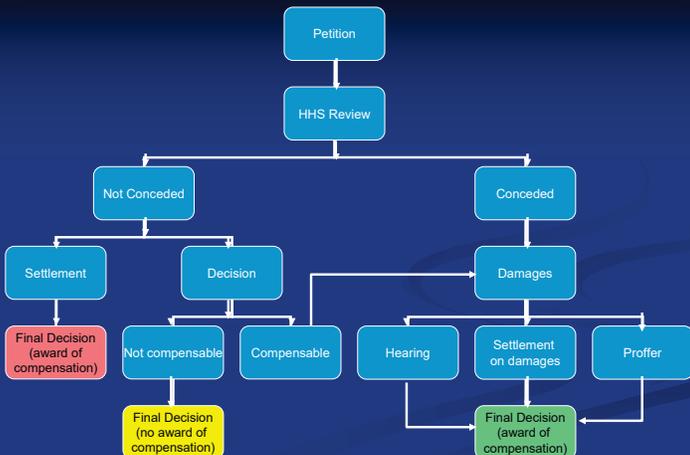
- **Settlement:** Petition is resolved via a negotiated settlement between the parties, and results in the filing of a stipulation that memorializes the terms of the settlement.
- **Decision:** Special Master issues decision on the merits of the petition.
- **Non-compensable/Dismissed:** Petition dismissed.
- **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>21</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.

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## Petition Processing in the Office of Special Masters



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## Levels of Appeal in Vaccine Act Cases



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# Appeals Process

