

SECTION V. SETTLEMENTS AND ALTERNATIVE DISPUTE RESOLUTION (“ADR”)

Chapter 1. Trends in Settlement in the Vaccine Program.

A significant number of Vaccine Act cases (other than those filed in the Omnibus Autism Program) are resolved by settlement, although the facts and circumstances of some cases may make settlement unlikely. Settlements are an expeditious and efficient method for resolving appropriate cases. Settlements generally occur (1) within the first 12-18 months after the petition is filed; (2) after the Rule 5 status conference; or (3) after a decision on entitlement. Settlements prior to a decision on entitlement generally represent so-called “litigative risk” settlements, in which a party’s likelihood of prevailing on the merits modifies the valuation of potential damages. In litigative risk settlements, the respondent does not concede that vaccines are responsible for petitioner’s injuries, or that petitioner has satisfied the criteria for compensation, but is willing, without formally conceding entitlement, to pay some compensation.

Chapter 2. Settlements.

A. Reasons to Engage in Settlement.

Settlements significantly reduce the time period between filing of the petition and ultimate receipt of compensation. Both counsel are encouraged to consult with their respective clients soon after the petition is filed regarding settlement. A petitioner should feel free to initiate settlement discussions with respondent’s counsel at any point after a petition is filed.

Even with expeditious processing, however, a well-documented but contested off-Table injury case is unlikely to reach a ruling on entitlement in less than 24 months. If entitlement to compensation is found, additional time is required for the damages phase before compensation can be awarded. Many cases take much longer than 24 months to reach a causation decision. Updating and filing records, obtaining expert reviews and opinions, scheduling and conducting hearings, filing briefs, and issuing an entitlement decision take considerable time and effort and may ultimately result in a decision adverse to petitioners.

If a party proposes settlement, that fact will not be considered by the presiding special master should settlement negotiations fail to result in resolution of the case.

B. Initiating Settlement.

Some special masters encourage settlement discussions between the parties soon after the case is filed. Others expect the parties to indicate whether settlement discussions are desired. When the parties engage in early settlement negotiations, most special masters are willing to assist the process by extending deadlines for filing documents and reports to avoid an unnecessary expenditure of resources, or to refer the matter to another special master for mediation purposes. Parties are encouraged to

contact the assigned special master whenever they enter into good faith settlement discussions or desire the guidance or assistance of the special master regarding potential negotiations or settlement. Either party should feel free to initiate settlement discussions at any point after a petition is filed.

To initiate participation in ADR, the parties should contact the presiding special master to request suspension of existing deadlines and the assignment of a mediator. Chapter 4 below contains more information about ADR in general and the types of ADR available.

C. Obtaining Information to Facilitate Settlement.

Often, respondent will need additional documentation from petitioner unrelated to entitlement to enter into any meaningful discussions and to make a reasonable response to a settlement demand. Such documentation may include health insurance plans, information regarding Medicaid payments, income tax returns or Social Security account statements (documenting past earnings), and out-of-pocket health care costs. If a petitioner's counsel anticipates making a settlement demand, early efforts to obtain these documents from a client are necessary so that meaningful discussions can occur.

The Vaccine Program section of the Court of Federal Claims website (www.uscfc.uscourts.gov) can provide a great deal of information about settlements in other cases involving the same vaccines and injuries. However, decisions approving voluntary settlements generally do not include information regarding the extent of the injury claimed or the economic loss suffered.

Chapter 3. The Special Processing Unit.

A. Purpose of the Special Processing Unit.

The Special Processing Unit ("SPU") is designed to increase the court's ability to provide for the expedited and informal resolution of claims. An OSM staff attorney conducts the day-to-day management of the case including holding status conferences, providing support to the parties, and informing the Chief Special Master of the parties' progress.

B. Assignment to the Special Processing Unit.

Once a petition is filed, it is reviewed to determine if it is a candidate for early resolution. If a case appears appropriate for expedited settlement or, less commonly, subject to dismissal, the case is assigned to the Chief Special Master as part of the SPU. Cases appropriate for expedited settlement are those without substantial complicating factors that historically have been conceded or settled. Cases involving Table injuries, for example, may be appropriate for assignment to SPU. Cases subject to dismissal through SPU are those involving a substantial defect obvious from the