

Chief Special Master's Report

UNITED STATES COURT OF FEDERAL CLAIMS

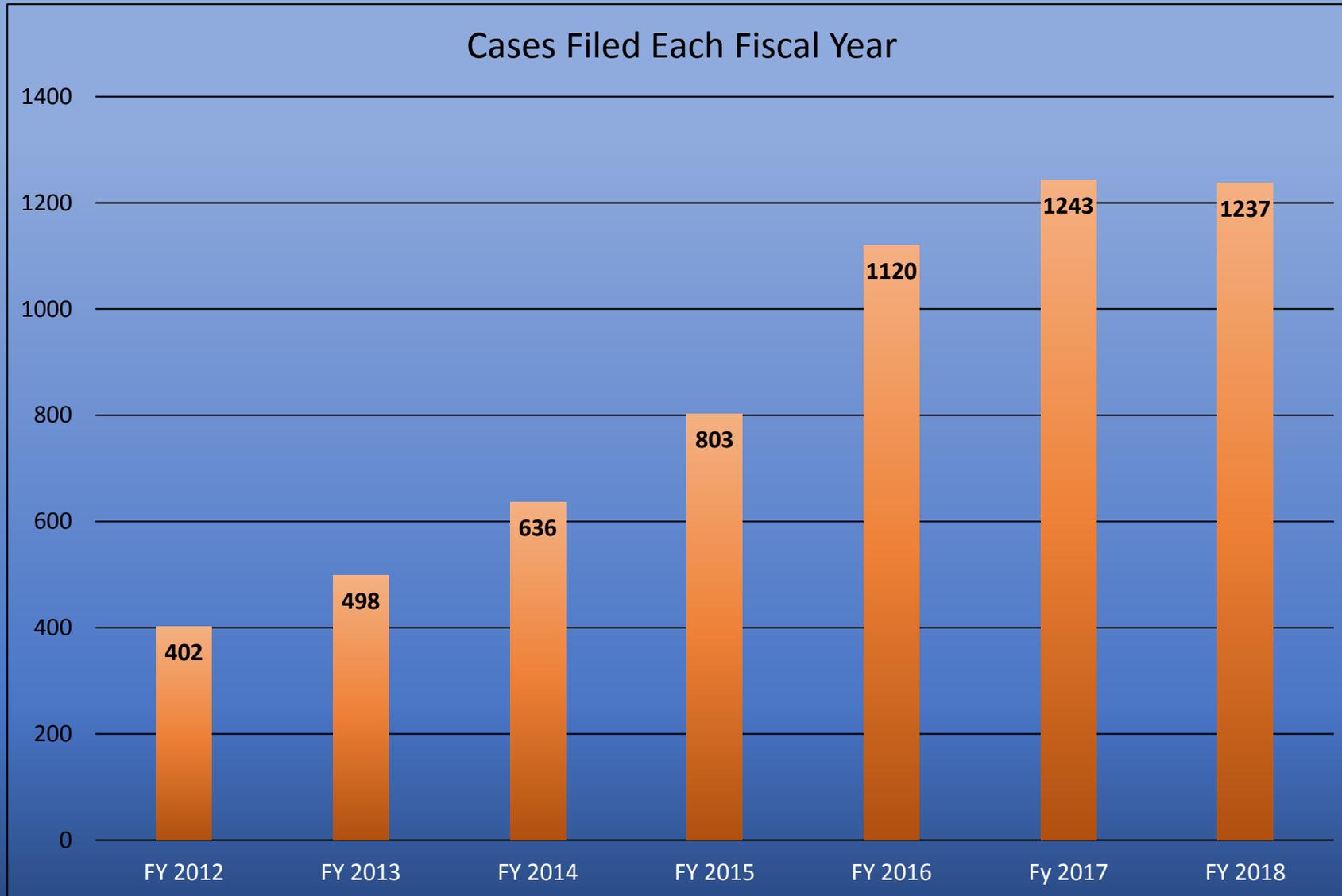
29th Annual Judicial Conference
National Courts Building, Washington, DC
Wednesday, November 14, 2018

*Growing Areas of Practice
in the Court of Federal Claims*

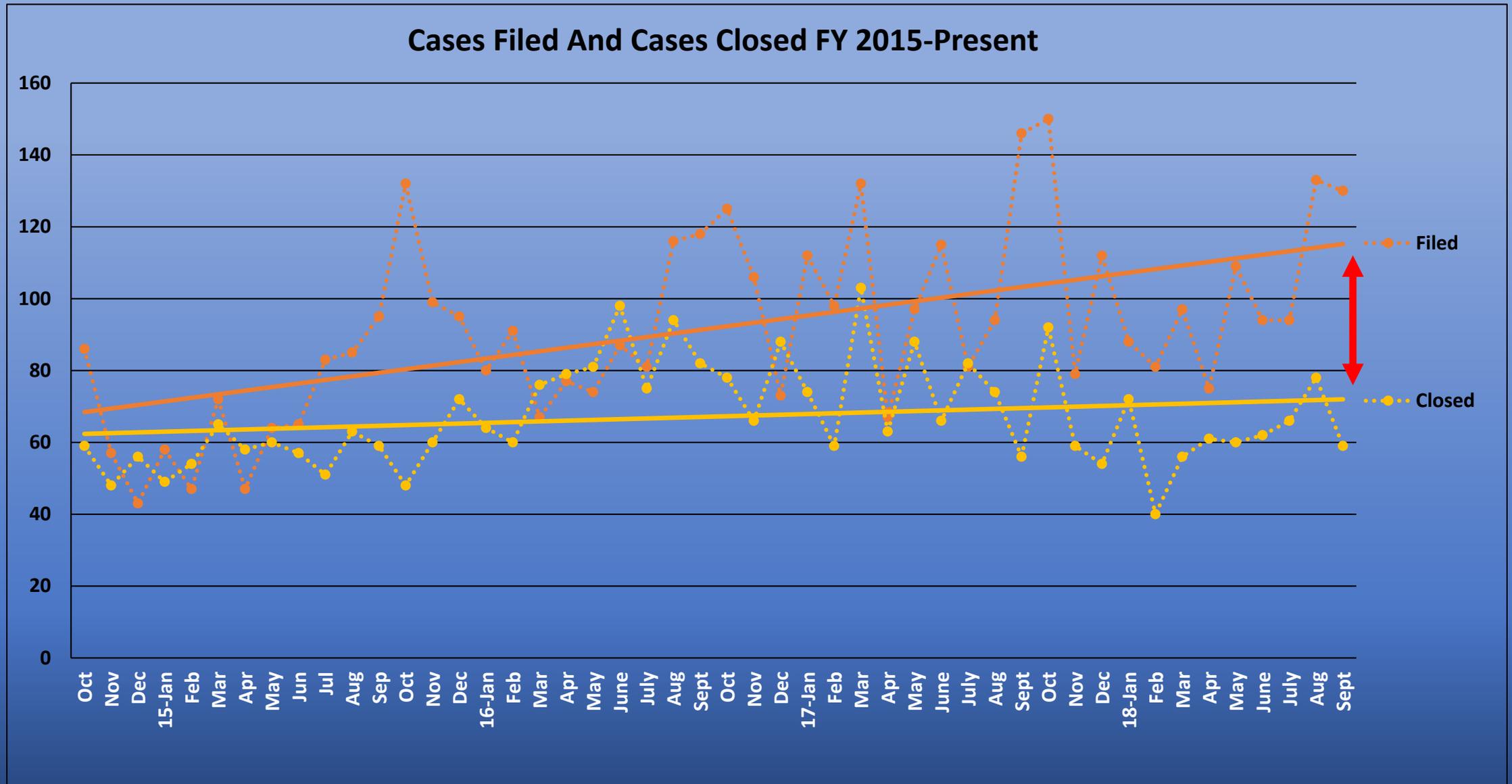


IT IS AS MUCH THE DUTY OF GOVERNMENT TO
RENDER PROMPT JUSTICE AGAINST ITSELF, IN
FAVOR OF CITIZENS, AS IT IS TO ADMINISTER
THE SAME, BETWEEN PRIVATE INDIVIDUALS
ABRAHAM LINCOLN

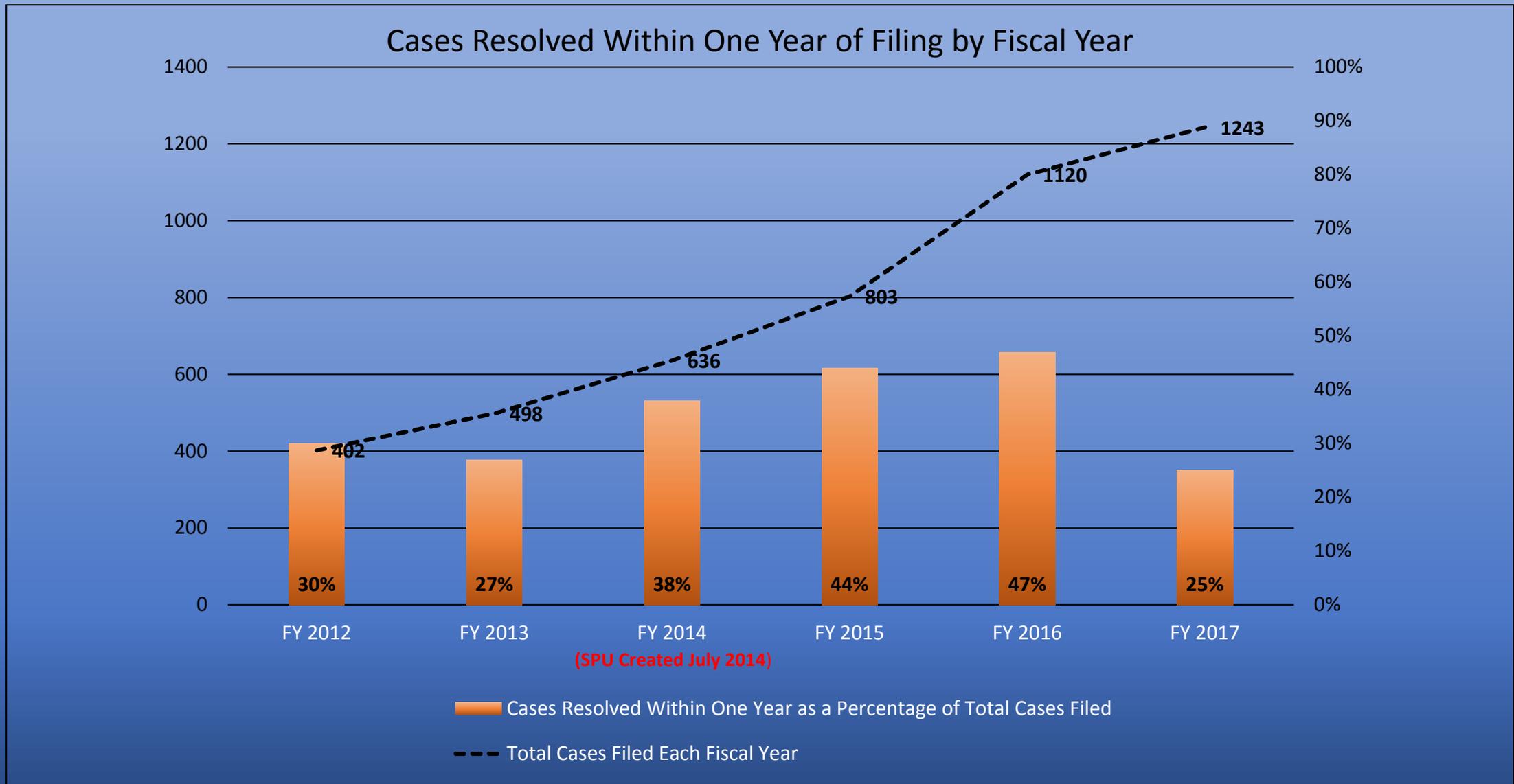
The New Normal is Triple the Filings as of Six Years Ago



The Trend is Toward a Widening Gap Between Case Filings and Resolutions



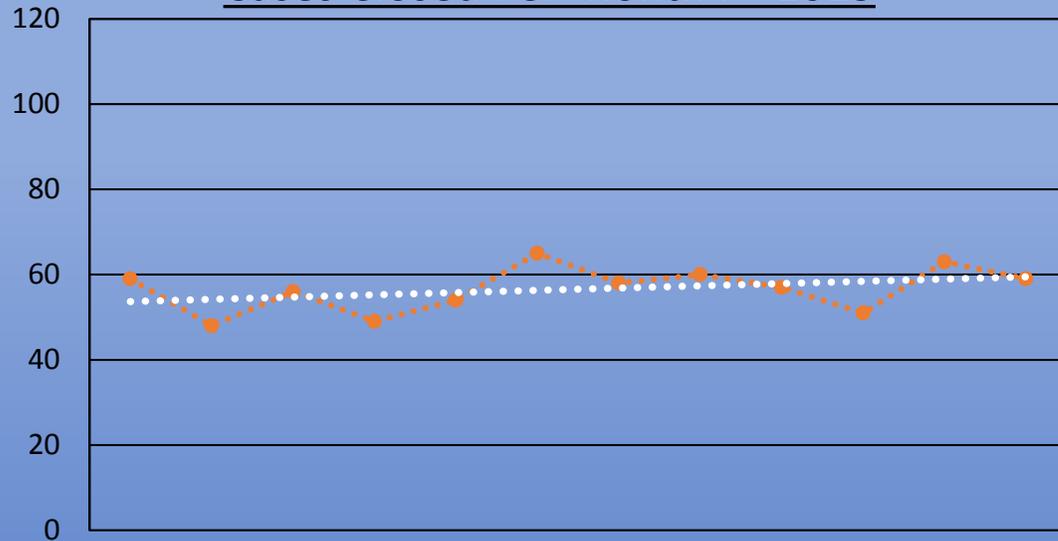
Beginning With Cases Filed in FY 2017 There Has Been a Downturn in Cases Resolved Within One Year of Filing



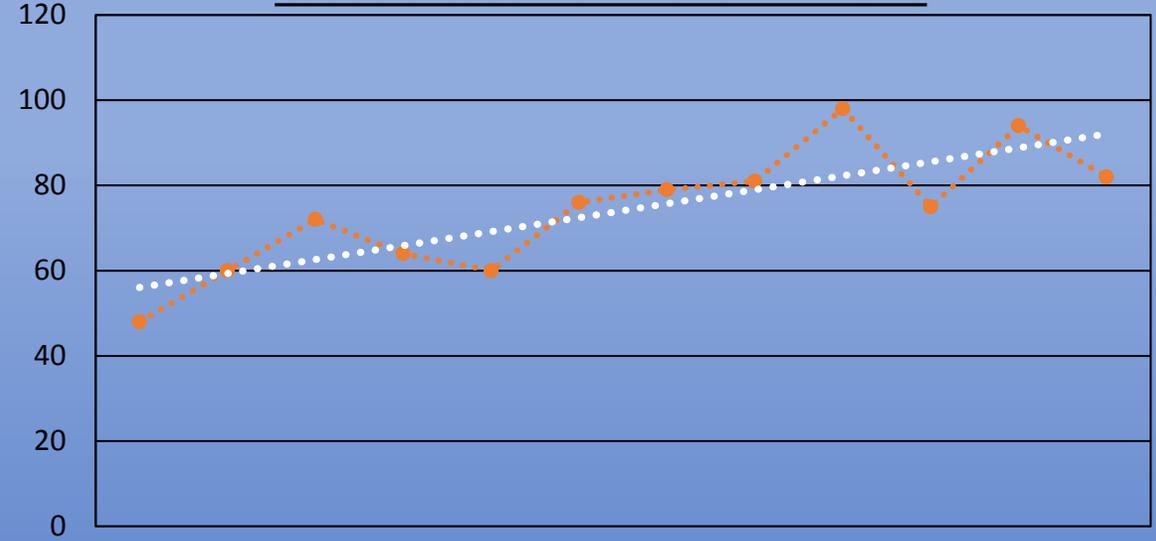
Data provided by USCFC's Clerk's Office As of September 30, 2018.

Case Resolutions Per Month Are Trending Downward in FY 2017 and 2018

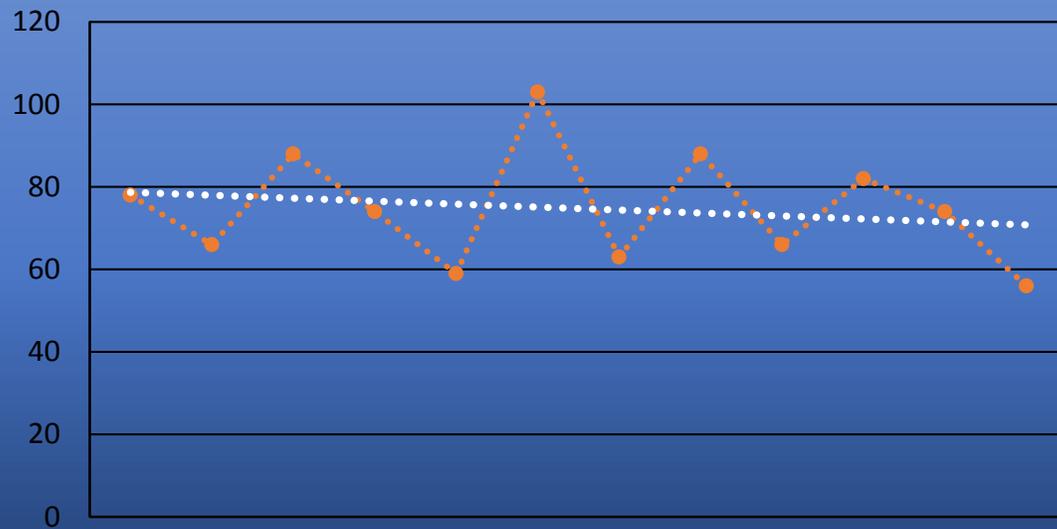
Cases Closed Per Month FY 2015



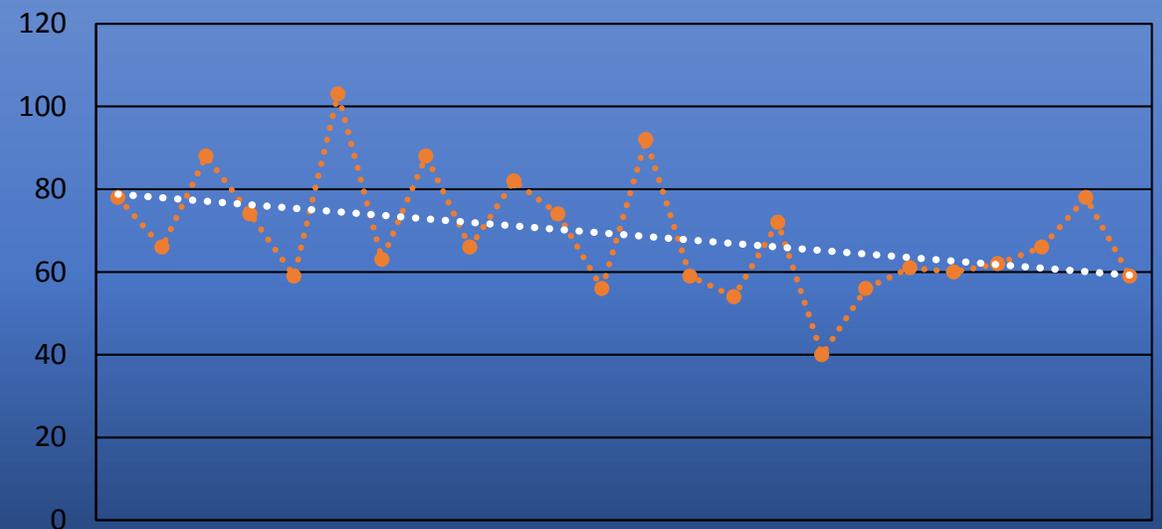
Cases Closed Per Month FY 2016



Cases Closed Per Month FY 2017

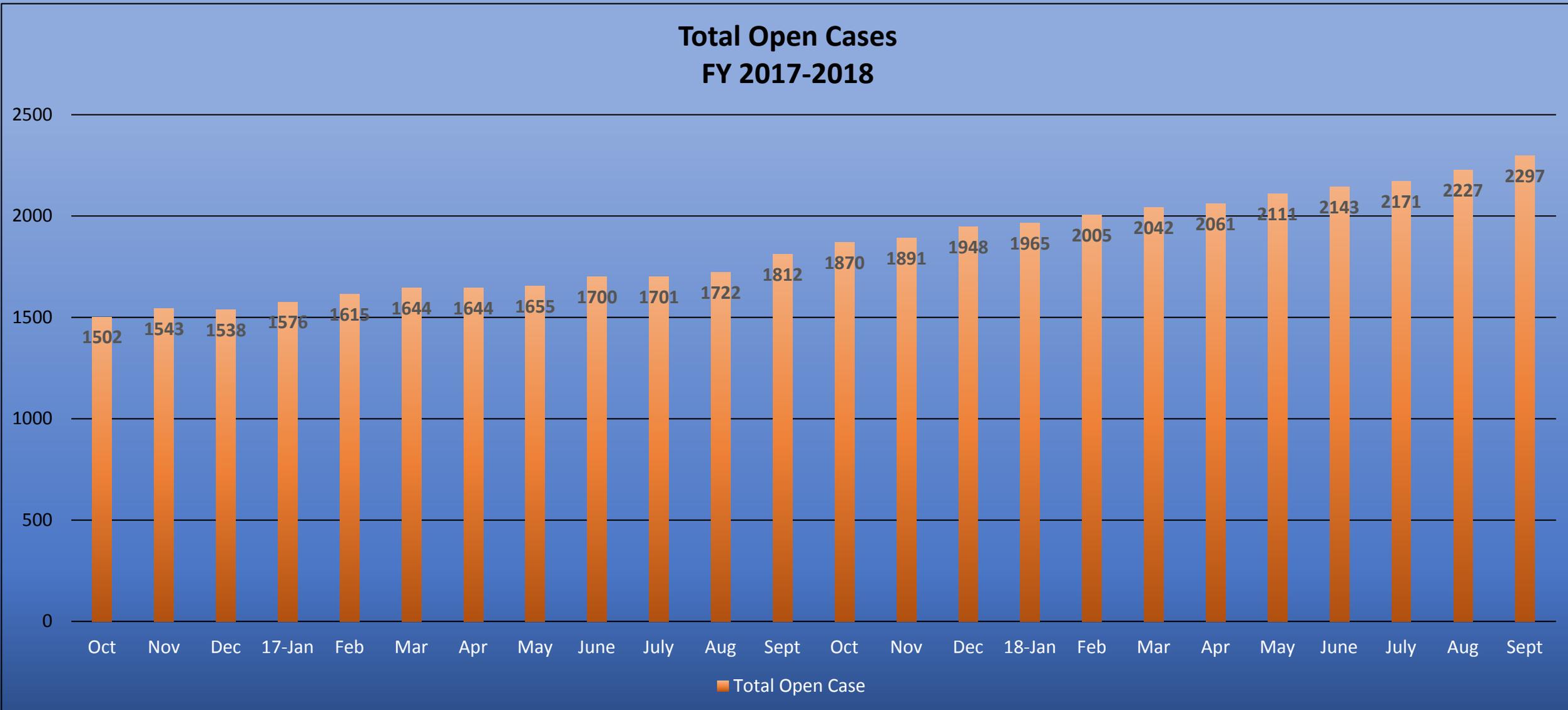


Cases Closed Per Month FY 2018



The Total Number of Open Cases Continues to Climb

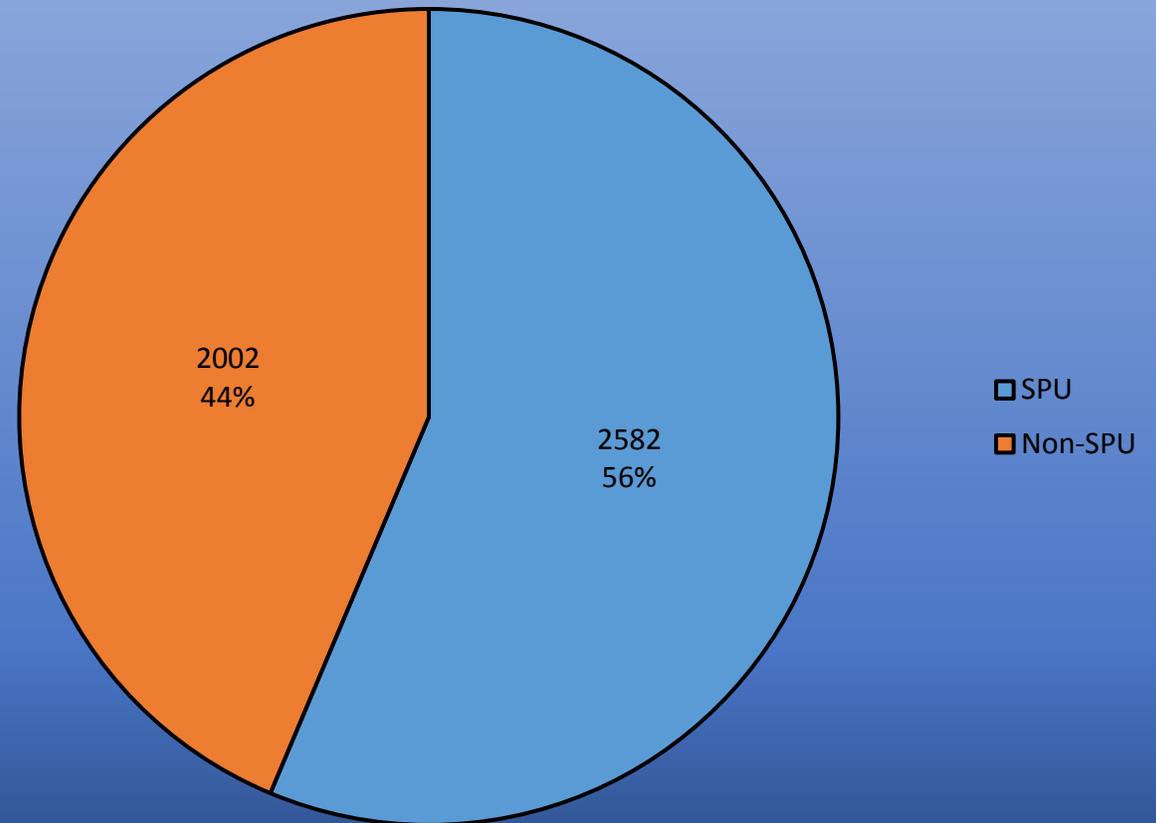
**Total Open Cases
FY 2017-2018**



Over Half of Cases Are Now Assigned to the SPU

- Since SPU began on July 1, 2014, 4,584 Vaccine Petitions have been filed.
- Of those 4,584 petitions, 2,582, or 56%, were assigned to SPU.

Cases Filed July 1, 2014, to September 30, 2018



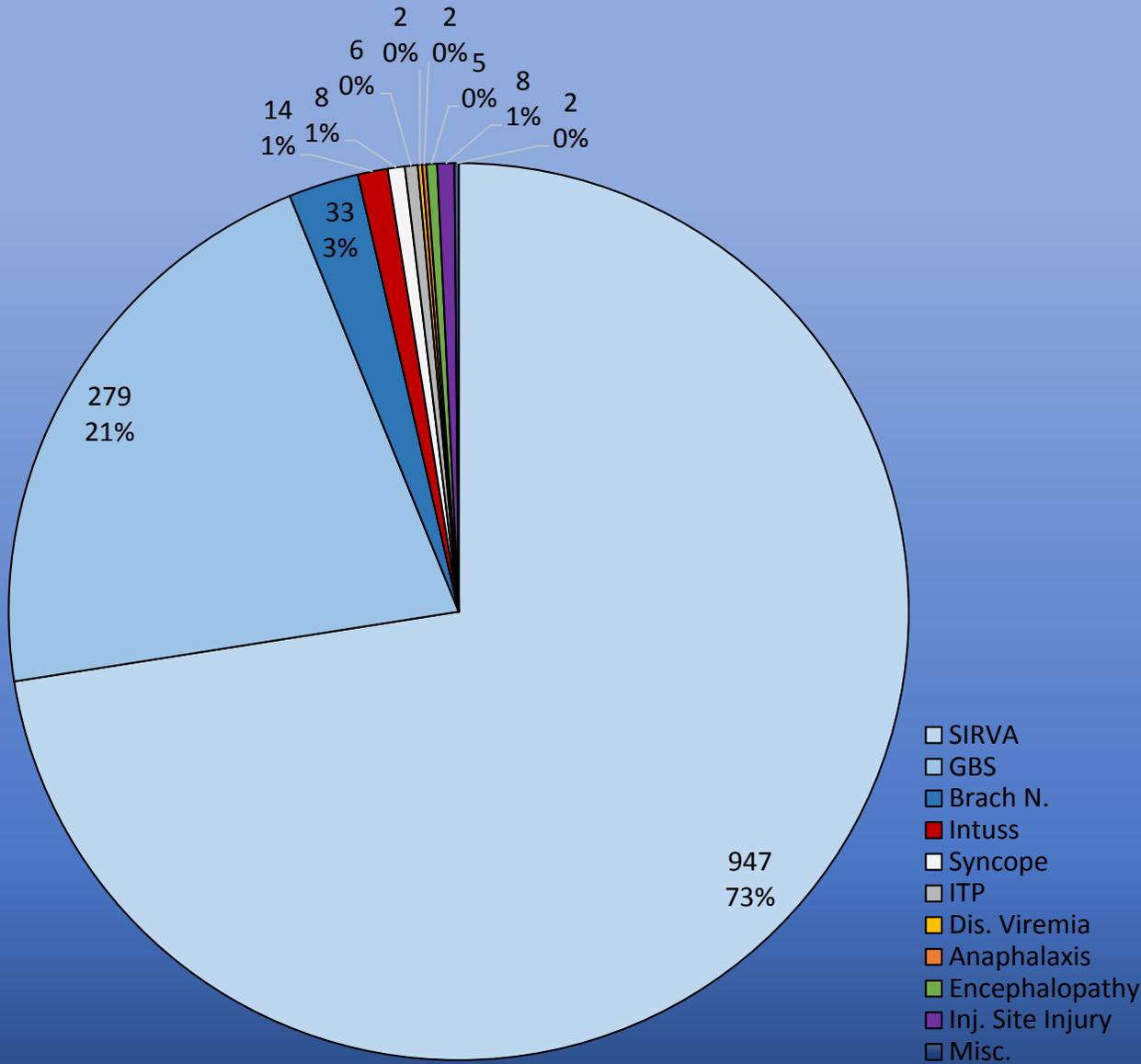
SPU Experience So Far

- As of September 30, 2018, 1,358 SPU cases have been resolved.
 - 1,306 have been compensated
 - 52 have not been compensated
- 96% of the cases closed by SPU have resulted in compensation.
- 166 transferred out of SPU for resolution

What Kinds of Cases are Being Compensated in SPU?

Number of Cases Compensated:

SIRVA	947
GBS	279
Brachial Neuritis . . .	33
Intussusception	14
Syncope	8
ITP	6
Dis. Viremia	2
Anaphylaxis	2
Encephalopathy	5
Inj. Site Injury	8



Data is approximate and is provided by the Office of Special Masters as of September 30, 2018.

SPU Time to Resolution

- For compensated cases, median time to resolution has been 308 days.
- The fastest resolved case saw a decision awarding compensation in just 42 days.
- 32% of compensated cases in SPU have resolved within 240 days.

In Fiscal Year 2018 The Office of Special Masters Was Busy

- In Fiscal year 2018, the Office of Special Masters issued 542 decisions adopting stipulations or proffers and 250 conceded rulings on entitlement.
- But looking beyond informal resolutions, a review of CM/ECF filings for Fiscal Year 2018 shows nearly 1,000 *reasoned* rulings and decisions. Specifically:
 - **181** decisions issued by Special Masters in addition to the 542 decisions adopting stipulations or proffers. The vast majority of these 181 decisions are reasoned decisions resolving cases.
 - Additionally, there have been many other reasoned decisions, including:
 - **21** findings of fact
 - **6** decisions on remand
 - **25** *reasoned* rulings on entitlement
 - There were also **753** decisions issued regarding attorneys' fees and costs (both final and interim).

Data is approximate and is provided by the Office of Special Masters as of September 30, 2018. "Reasoned" refers to any ruling or decision in which the special master resolved a contested issue or reached a determination based upon an assessment of the record evidence in the absence of a concession or proffer by the government.

November 2014

VACCINE INJURY
COMPENSATIONMost Claims Took
Multiple Years and
Many Were Settled
through Negotiation

GAO-15-142: Vaccine Injury Compensation Program. As of March 31, 2014, 24 percent of claims filed from fiscal years 1999 through 2014 were resolved in 2 years or less, and 40 percent were resolved in 5 years or less.



Source: GAO analysis of data from the Vaccine Injury Compensation Program, as of March 31, 2014.

GAO-15-142: Vaccine Injury Compensation Program. As of March 31, 2014, 24 percent of claims filed from fiscal years 1999 through 2014 were resolved in 2 years or less, and 40 percent were resolved in 5 years or less.

The GAO review in November 2014 looked at time taken for adjudication of all cases filed fiscal years 1999-2014. It found that as of March 31, 2014, 24% of claims (2,281 claims) were resolved in 2 years or less with an additional 16% (1,528) resolved within 2-5 years. GAO-15-142, p. 10. The GAO noted that a greater percentage of cases filed since fiscal year 2009 were resolved within 1-2 years since there were many fewer autism claims among those filings. *Id.*

Page 11

GAO-15-142: Vaccine Injury Compensation Program

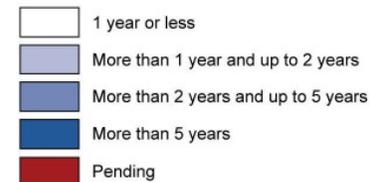
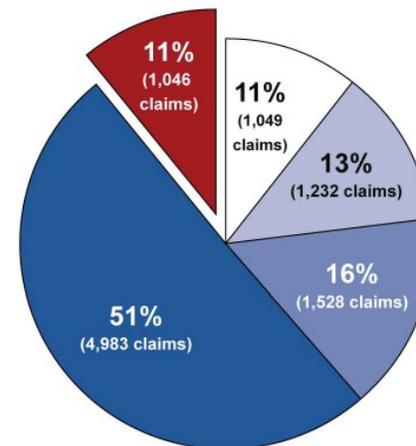
GAO Audit, November 2014

The GAO review in November 2014 looked at time taken for adjudication of all cases filed fiscal years 1999-2014. It found that as of March 31, 2014, 24% of claims (2,281 claims) were resolved in 2 years or less with an additional 16% (1,528) resolved within 2-5 years. GAO-15-142, p. 10. The GAO noted that a greater percentage of cases filed since fiscal year 2009 were resolved within 1-2 years since there were many fewer autism claims among those filings. *Id.*

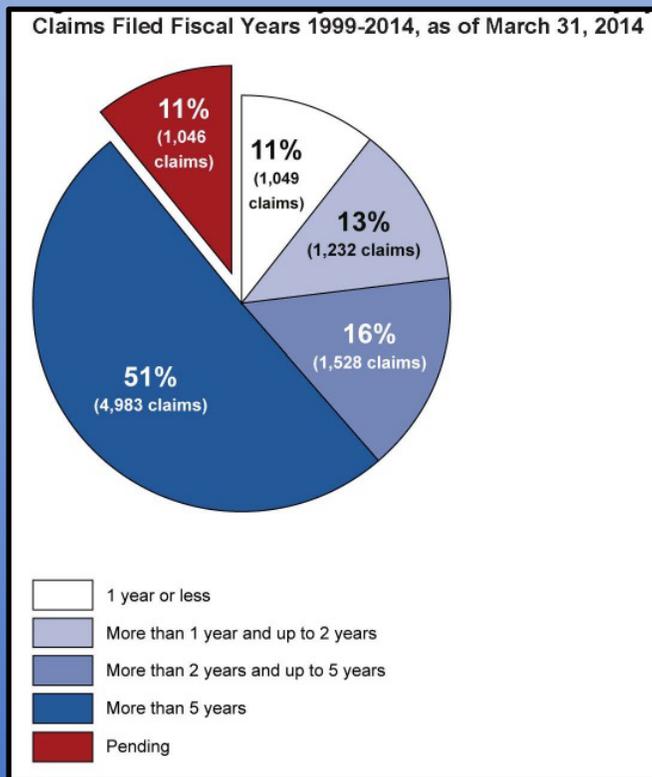
24% resolved in 2 years or less

40% resolved in 5 years or less

Claims Filed Fiscal Years 1999-2014, as of March 31, 2014



Significant Improvement Since GAO Audit



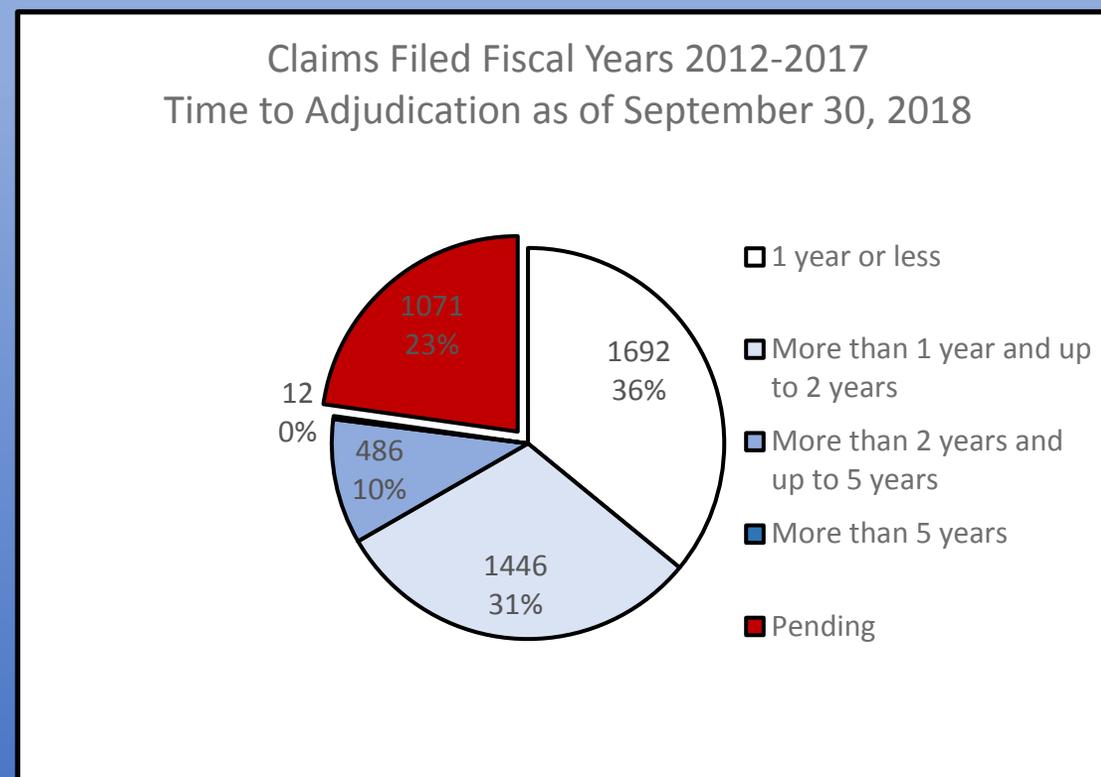
Time to Adjudication

Then to Now . . .

COMPARE:

24% → 67%
resolved in 2 years or less

40% → 77%
resolved in 5 years or less



New Team Members to Take on New Challenges

- **Katherine Oler** was appointed special master in November 2017.
- Additionally, since the start of Fiscal Year 2018, SPU has added three new staff attorneys:

Eileen Vachher

Reiko Suber

Patrick Rodefeld

- Following the success of SPU, the Office of Special Masters has also added a team dedicated to expediting resolution of attorneys' fees and costs:

Jill Mertz, Paralegal

Mark Hollaar, Staff Attorney

OSM Attorneys' Fees and Costs - Goals

- Fairness
- Efficiency
- Transparency

OSM Attorneys' Fees and Costs - Forum Hourly Rate Fee Schedule

Rates for Calendar Years 2015-2018 are posted on the Court's website. Rates for Calendar Year 2019 will likely be posted in February 2019.

UNITED STATES COURT OF FEDERAL CLAIMS

Home Courthouse About the Court Judges Special Masters

OSM Attorneys' Forum Hourly Rate Fee Schedules

- [OSM Attorneys' Forum Hourly Rate Fee Schedule: 2018](#)
- [OSM Attorneys' Forum Hourly Rate Fee Schedule: 2017](#)
- [OSM Attorneys' Forum Hourly Rate Fee Schedule: 2015 - 2016](#)

[Printer-friendly version](#)

Howard T. Markey National Courts Building • 717 Madison Place, NW, Washington, DC 20545

Vaccine Claims/Office of Special Masters

The National Vaccine Injury Compensation Program ("Vaccine Program") comprises the National Vaccine Injury Compensation Program ("Vaccine Act"). See Pub. L. No. 99-660, 100 Stat. 3755 (1986) (codified as amended effective October 1, 1988). It establishes the Vaccine Program as a no-fault compensation program for persons allegedly suffering injury or death as a result of a vaccine. Congress intended that the Vaccine Program provide individuals a swift, flexible, and fair arena of traditional tort litigation. [Read more...](#)

Vaccine Rules of the United States Court of Federal Claims

Vaccine Guidelines and Sample Filings

[OSM Attorneys' Forum Hourly Rate Fee Schedule](#)

Notice of Vaccine Practices

- Settlements and Alternative Dispute Resolution
- Lost Wages and Federal Register Notices

Opinions/Orders

Autism Proceeding

Vaccine Attorneys

The Office of Special Masters—an office within the United States Court of Federal Claims, see 42 U.S.C. § 300aa-12(c)—maintains a list of attorneys as a service to petitioners seeking compensation under the National Vaccine Program established by the Department of Health and Human Services. See 42 U.S.C. §§ 300aa-1, 12(a).

Please click here to view the Federal Judicial Center's video program on the Vaccine Injury Program and the U.S. Court of Federal Claims

Office of Special Masters
Attorneys' Forum Hourly Rate Fee Schedule: 2018

Attorneys with:

31+ years of experience in practice	\$407 – \$455
20 – 30 years of experience in practice	\$370 – \$439
11 – 19 years of experience in practice	\$317 – \$396
8 – 10 years of experience in practice	\$291 – \$370
4 – 7 years of experience in practice	\$238 – \$317
Less than 4 years of experience in practice	\$159 – \$238
Paralegals	\$132 – \$153

Explanatory Notes

- The schedule above applies to work performed for the calendar year 2018.
- Beginning with the 2015-2016 Attorneys' Forum Hourly Rate Fee Schedule, the Office of Special Masters (OSM) prepared ranges of hourly rates for attorneys of varying experience and for paralegals for the purpose of evaluating motions for attorneys' fees in vaccine cases filed in the United States Court of Federal Claims. See 42 U.S.C. §§ 300aa-10 to -34 (2012) (National Childhood Vaccine Injury Act or the "Vaccine Act"); 42 U.S.C. § 300aa-15(e)(1). The 2015-2016 schedule adopted the ranges set forth in *McCulloch v. Sec'y of Health & Human Servs.*, No. 09-293V, 2015 WL 5634323 (Fed. Cl. Spec. Mstr. Sept. 1, 2015), which has been endorsed by all sitting special masters as of October 24, 2016.
- The above 2018 rates were derived by adjusting the 2015-2016 Attorneys' Forum Hourly Rate Fee Schedule rates by the Producer Price Index – Offices of Lawyers ("PPI-OL"). Special masters have found the PPI-OL to be persuasive as a measure of inflation when re-calculating *McCulloch* rates for work performed in subsequent years. However, in every case, the decision of whether to use the PPI-OL or any other measure of inflation remains within each special master's discretion. There is no binding Federal Circuit guidance for Vaccine Act cases regarding the measure of inflation to be used in determining increases in attorney fee rates over time. *Parrott v. Shulkin*, 851 F.3d 1242, 2017 WL 1111111 (9th Cir. 2017).

1

OSM Attorneys' Fees and Costs - Petitioner's Costs

All Applications for Attorneys' Fees and Costs Must Include:

- Documentation supporting any costs claimed;
and
- A statement pursuant to General Order No. 9:
 - Signed by petitioner and counsel; and
 - Clearly delineating which costs were borne by counsel and which costs were borne by petitioners, including the amount of any retainer that has been paid.

Also Helpful: Citation(s) to previously awarded attorney hourly rates

Task Force

Goal: To reduce the current backlog of cases.

Additional information regarding the task force will be announced to the petitioners' bar and Department of Justice in the near future.