

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

INFORMAL BRIEF OF APPELLANT

Case Number: 22-1854

Short Case Caption: DiMasi vs HHS

Name of Appellant: Stephanie DiMasi

Instructions: Read the [Guide for Unrepresented Parties](#) before completing this form. Answer the questions as best as you can. Attach additional pages as needed to answer the questions. This form and continuation pages may not exceed 30 pages.

Attach a copy of the trial court's opinion, order, and/or judgment. You may also attach other record material as an appendix. Any attached material should be referenced in answer to the below questions. Please redact (erase, cover, or otherwise make unreadable) social security numbers or comparable private personal identifiers that appear in any attachments you submit.

1. Have you ever had another case before this court? ☐ Yes ☒ No

If yes, state the name and number of each case.

2. Did the trial court incorrectly decide or fail to take into account any facts?

☒ Yes ☐ No

If yes, what facts?

The court falsely concluded that neurological conditions developed from the flu vaccine were pre-existing based on a few instances of unrelated prior symptoms and contrary to evidence in the contemporaneous medical records that supported a vaccine reaction and the opinions of the physicians who treated me. (continued)

FORM 12. Informal Opening Brief (District Court, Court of International Trade,
and Court of Federal Claims)

Form 12 (p. 2)
July 2020

3. Did the trial court apply the wrong law? ☐ Yes ☒ No

If yes, what law should be applied?

I believe laws discussed to be accurate (Rule 59 and several parts of Rule 60) However, I do not believe the application of this law was applied correctly or fairly. The decision to deny the reopening of my case was based on inaccurate facts of my medical history, symptom timing and attorney abandonment. Most notably was a lack of consideration of the extensive evidence I provided in an attempt to prove that my original claim should have had a favorable decision. These facts I presented were not discussed or addressed in the subsequent denials.

4. Did the trial court fail to consider important grounds for relief?

☒ Yes ☐ No

If yes, what grounds?

The original decision was based on the wrong conclusions due to invalid assumptions made by the court, which were contrary to the actual facts and against the weight of the evidence. After bringing this to the attention of the Special Master in an attempt to reopen my case, his denial to reopen judgement again, does not address or discuss any of the 100+ pages of proof which I supplied and explained in great detail in my motions. Instead, he concludes that "previous facts found will not be undone" and "Although Ms. DiMasi claims her neurological symptoms began three to four days after vaccination, neither she nor Mr. Gold presented sufficient evidence to establish that fact" (Ex. B, p.17, pp 4). (continued)

5. Are there other reasons why the trial court's decision was wrong?

☒ Yes ☐ No

If yes, what reasons?

As mentioned above, during my case, my attorney did not present any argument to explain my pre-vaccination history despite my supplying him with all of the information. After the opposing party submitted an argument for my denial based on the false assumption that my conditions were pre-existing, he failed to file a response, and final judgement was made, leaving me virtually unrepresented on this crucial issue. There was a long stretch between my initial meeting with Mr. Gold and the decision, (6 and ½ years), because he put off filing until the last minute (almost three years after I came to him with my case) and then filed a few extensions during the case for reasons unknown to me. (continued)

FORM 12. Informal Opening Brief (District Court, Court of International Trade,
and Court of Federal Claims)

Form 12 (p. 3)
July 2020

6. What action do you want this court to take in this case?

In summary, my case was denied based on factual errors that were concluded in direct conflict with contemporaneous medical records, and with objective evidence in the records, medical literature relied upon by the court and opinions and diagnoses of my treating providers (who are all experts in their fields). In the decision, it states, "Petitioners are required to prove their cases by a preponderance of the evidence 42 U.S.C. § 300aa-13(a)(1). .." Proof of medical certainty is not required..Distinguishing between " preponderant evidence" and " medical certainty" is important because a special master should not impose an evidentiary burden that is too high." (Ex.A, p.6-7). (continued)

Date: 6/21/22

Signature: _____

Name: _____



Stephanie V. DiMasi

2.) Evidence in my medical records not only negated that my condition was pre-existing, but clearly indicated an acute injury from the flu vaccine.

History of injury

I had never had the flu vaccine before, but had several other vaccines in my lifetime.

I was 47 years old, a single mother of two teenage daughters. I was managing two rental properties and working as a hairdresser 20 hours per week to support them while attending a full time accelerated nursing program to become a nurse practitioner. This was something I had always wanted to do but had raised my children alone since a young age and they were always priority. Once they were older, I decided to start my journey to a new career. In addition to my busy lifestyle of working and school, I was a very physically active person. I was a downhill skier, mountain hiker and boater. I biked, swam, did intense aerobics and kickboxing and did all of my own yard work and house maintenance. My social life was full with family, big gatherings at my house, friends, weekends away, travel, ect. I was always on the go and enjoyed my life to the fullest. I had the flu vaccine for the first time on October 20, 2011 as required by MGH Institute of Health Professions, the nursing school I attended. I had an immediate adverse reaction with elevated heart rate and dizziness and was laid down in a room until symptoms resolved, which took ½ hour. It was assumed by the staff to be a “vaso-vagal” reaction and as a result I was assured it was ok to receive it the following year, by the person in charge of vaccine compliance. She scheduled an appointment for me on Dec. 4, 2012 to have the second vaccine at MGH Occupational Health Services, so that they could “lay me back in a chair” afterward to avoid a recurrence of symptoms. After the injection in my left arm, I sat for a few minutes and then got up to

leave. As I walked out, I suddenly felt similar symptoms to those I had the year prior, but this time, they were much worse. I felt warm yet chilled, dizzy, shaky and my heart was racing. I was brought into a room and assessed by a nurse practitioner, who checked my heart rate and blood pressure, which were both elevated. (normally 60s heart rate and 90s/60s blood pressure were 100s and 120s/80s). After continuing to feel unwell for about 45 minutes I noted throat thickening. I was given benadryl, which helped somewhat. I opted not to go to the ER because I had my father with me and didn't want to upset him anymore than he already was, and also, I thought symptoms would eventually resolve as they had the previous year. But I woke up that night at 3am feeling like something was really wrong. I called my primary care doctor first thing in the morning and went in. He noted EKG changes (ST depressions) and sent me by ambulance to Mass General Hospital where they kept me overnight for observation until the afternoon of Dec 6 when I was stable, releasing me with a diagnosis of allergic reaction. The next day, although feeling better from the prior symptoms, I had a strong ringing in my ears and noticed a very faint tingle on the outer side of my left knee, so slight I was not sure about it. However, the next morning, on Dec.8, I gradually began to develop an electrical feeling and sensitivity in my left foot and lower leg which worsened throughout the day. By afternoon, it had become so severely sensitive that I was limping. That night, I began to feel very unwell and took my blood pressure, which was extremely elevated (168/110). I went back to MGH ER. where they did an ultrasound of my leg to look for a blood clot which was negative and I was diagnosed with elevated blood pressure (which I had never had in my life). (All records, Ex 11). I was told to follow up with my primary care and was seen by the NP two days later. At that point,

both legs were feeling weak. She sent me urgently to infectious disease, Dr. Olans, who opined peripheral neuropathy from the flu vaccine reaction and suggested I see neurology urgently (Ex 13, p.3-4). I had a neurologist, Dr. Edward Fisher, whom I had seen in the past for a herniated disc in my neck and related myofascial pain. I called his office, but could not get an appointment for three weeks. I asked the secretary to please fit me in sooner because I was very concerned. The doctor called me that night and I explained the sudden symptoms and asked if it could be Guillain-Barre. I was told, "If you can walk and move your arms, then it is *not* Guillain-Barre" and that it could wait. (I now know that this was *not* true, as there are many presentations for GBS, from mild to severe) (Ex.18,p.6). Meanwhile, each day the neuropathy and weakness which started in my lower legs, gradually moved up higher to my thighs, to include my entire legs, and continued to worsen. I called MGH to be referred to someone sooner and was scheduled a week later with an unknown neurologist, Dr. Chen. He was typing the entire time I was explaining what had happened to me and got my story all mixed up, making several errors in the recount in his documentation. (This was not brought to my attention until years later). His error having the greatest impact on my care was his misunderstanding that my leg symptoms happened immediately after the vaccine (Ex 12, p 1-2), rather than 3-4 days later as they had actually occurred. At the time, I was not aware of the importance of the timing of particular symptoms for diagnosing what was wrong with me and as a result, I did not question his not ordering a lumbar puncture even though I wondered why he wasn't. I now know that this was what I desperately needed at the time, as it would have resulted in urgent hospitalization and treatment, which likely would have reversed the damage and prevented the serious

consequences that I endured by remaining untreated. He did note mild weakness on exam and altered reflexes. (I was extremely strong prior to this injury, so what was a mild weakness to him was drastic for me, compared to my baseline and my reflexes had always been normal). He said he was ordering EMG but must have forgotten to, because this was never scheduled. I continued with symptoms of tingling, burning, electrical sensations, numbness, coldness, prickling and pain in both legs and each day that I got out of bed and stood up, they felt weaker. I also began to have very mild symptoms in my left arm. Suddenly, on Christmas Eve while sitting on the couch at a relatives house, I began to have spells of an extremely fast heart rate for no reason. One episode lasted so long that I felt like I could faint and an ambulance was called. I went to Brigham and Women's Hospital where I was diagnosed with tachycardia (Ex 13, p.5-6) and told to follow up with cardiology. A cardiac monitor was ordered, which confirmed sudden episodes of tachycardia and abnormal heart rhythms (Ex.9, p 3-5). On Dec 27, I finally saw Dr. Fisher, my former neurologist. I was hoping that I may receive some kind of urgent treatment from him, but unfortunately, he had documentation from Dr. Chen, which he must have relied on as fact, because he repeated the same error of neuropathy beginning "within minutes" of the vaccine", among other errors(Ex.12,p.3). He ordered MRIs of my head and neck, which were normal. He did not order an EMG, (probably because he thought Dr. Chen had already ordered it, as mentioned in his note). The neuropathy pain and weakness eventually went into my lower back and sacral area, which prompted another visit to PCP, Dr. Sen, who noted weakness and decreased ankle reflexes. He ordered a sacral MRI and referred me to orthopedics, but of course, there was nothing structurally abnormal to be

found. Somewhere between 4-6 weeks, all symptoms were at their worst. I had developed severe sacral pain to the point that I could not sit down and numbness in my pelvic area with a decreased sensation to urinate and have a bowel movement. I had difficulty emptying my bladder completely, and had one episode of urinary incontinence. My legs became so weak that they felt rubbery and I had trouble standing on them or walking. After this worst point, symptoms gradually began to rescind over months and I was left with residual weakness and pain in my legs and sacrum, having to carry a donut pillow with me to school so that I could sit down in class. Heart symptoms had also settled down, but a few months later, I suddenly began to have recurrences. It began with occasional episodes of tachycardia and then a few months after that, sudden symptoms of increased neurological pain and weakness in random areas of my arms and/or legs intermittently. Throughout early 2013-2014 I saw a neurologist, Dr. Ronthal, who noted weakness of muscles in my legs on exam and diminished reflexes as well as atrophy of paraspinal muscles on my sacral MRI.(Ex 14, p.10). I also saw a neurologist, Dr. Ropper, who noted leg and hip flexor weakness and loss of reflexes and opined "post vaccinal pandysautonomia" as an explanation (Id.p.7). In 2014, I began to have severe and frequent episodes of tachycardia and shortness of breath and could not get off the couch. I could not work or attend class and was in and out of the hospital for 3 months. I was seen by a Guillain Barre (GBS) specialist, Dr. Gorson, who opined that I had likely had a "mild variant of GBS (a sensory variant)" from the flu vaccine initially and thought now I was having symptoms of dysautonomia or postural tachycardia syndrome (POTS) (Id.p.16) In 2015, my PCP referred me to Dr. Mark Fisher, rheumatologist, who suspected "immune mediated process precipitated by the

vaccination”, suggested a skin biopsy for small fiber peripheral neuropathy. (Id, p 24). He referred me to a neurologist, Dr. Cros, who noted weakness in several muscles of my arms and legs. He listed a “demyelinating neuropathy from immunization reaction which was subacute but now has become more chronic with reoccurrences” as one of the differentials.(Id.p.31). He later performed EMGs which had abnormal findings in several muscles (Id.p 32-37). I was eventually diagnosed in 2016 by Dr. Bhattacharya, a neurologist whom I was sent to by Dr.Ropper, in his absence. He ordered a skin biopsy and autonomic testing which revealed length-dependent moderate to severe small fiber neuropathy affecting both sensory and autonomic nerves with resulting postural tachycardia syndrome (POTS), mild autonomic failure and also baroreflex failure, causing excessive heart rate fluctuations (Ex 3). He diagnosed an acute onset of small fiber neuropathy from post-vaccinal injury, analogous to Guillain Barre Syndrome (GBS)” (Ex 4, p.3), (Ex 18, p.8-11). (To note, GBS is a table injury in the vaccine court). (Ex.18, p.3). I have continued with a relapsing condition, which over time has worsened and symptoms have become so frequent that I now have daily debilitating symptoms. (Chronic neuropathic pain; heart rate, blood pressure and vascular dysregulation; digestive dysmotility; bowel and bladder issues and a much greater degree of muscle weakness and atrophy). I cannot participate in any of the activities I did prior to the vaccine and recently became unable to continue part-time work as a nurse practitioner (which was all I was able to do after I completed schooling, due to symptom frequency). I am now 56 years old, on disability and mainly homebound. My life has changed drastically..

Several records, including material contemporaneous records were missing from my file and therefore not considered in the decision. This was recently discovered. I am not sure how this could have occurred, since I signed and submitted all applicable releases to my attorney, Howard Gold, and sent each new medical note to him after every visit going forward. The docket states that the court also searched for and requested additional records, determining that my file “was complete”. In the decision to deny reopening, it is opined that missing records are due to my “own culpable conduct”, which I do *not* agree with. I acted diligently throughout my case, in assuring that all of them were supplied to my attorney for submission. I have several emails to him to prove this. Despite the missing records, however, there was still sufficient evidence in my court file to support a vaccine injury.

Facts that were incorrectly decided in the original decision (Ex A):

The conclusion that acute small fiber neuropathy (SFN) which I developed from a flu vaccine, was pre-existing was false. First, the acute form of SFN (which I had), can only occur from a triggering event. For this reason, it cannot pre-exist. My medical records and all of the providers whom I regularly saw up until I was diagnosed, cited the temporal relationship between the vaccine and my symptoms, which came on suddenly and severely. I have well documented ascending muscle weakness and decline of reflexes after the vaccine, which would only happen with an acute injury and does not occur in SFN from another cause. In addition, the skin biopsy that eventually diagnosed my condition indicated “moderate to severe” small fiber neuropathy (Ex 3, p. 1). This degree of damage could only happen from an acute onset of SFN, as happened with the vaccine and would not occur from an insidious onset. After the autonomic testing

and skin biopsy results, I was diagnosed by the ordering neurologist, Dr. Bhattacharyya, with SFN from post vaccinal injury (Ex.4, p.3&9).

The determination made by the court that this was pre-existing was false and it was based on one casual mention in 2012 (at an unrelated visit) of the back of my knee feeling tingly when I sat down and put pressure against it. (This happened after I had stayed at a relatives house on a blow up mattress which deflated completely during the night and I consequently awoke on the floor, leading to mild sciatic-like symptoms). The sensation described happened for one day and resolved. (Lumbar spine degeneration was later noted on MRI) (Ex.9, p. 6) which is likely why this transient symptom had occurred in this setting). I happened to have an unrelated appointment with Dr.Fisher on the day the symptom occurred and I mentioned that I felt it when I sat (when pressure was against the back of my knee). In the decision to deny compensation, Dr. Fischer's notation of "particularly when she sits" was falsely inferred by the court to be indicative of a reoccurring symptom, and the decision states, "The use of "particularly" indicates that Ms. DiMasi had been experiencing tingling for long enough to recognize patterns of when the sensation would come and go". This was speculative and not valid. If it actually *had* been a recurring symptom, I would have made an appointment with him sooner, rather than waiting until my yearly follow up (for an unrelated problem) to bring this to his attention. In addition, if I had described it as recurring, the neurologist certainly would have addressed it, which he didn't. Because it was casually mentioned by me, he was not at all concerned, which is very apparent in the documentation. (There was no addition to the problem list, no special exam during the visit or scheduling of testing for it and no mention in the assessment and plan portion of the

note) Most importantly, there was no mention of it by either one of us at my next follow up (Id.p.5-8). Both neurological exams at these two visits were normal. (Id.p.3, 6). (To note, this single report was in 2012, *after* my 2011 flu vaccine reaction. Even if the court had questioned pre-existing SFN based on a reported symptom in this note, it would seem appropriate to have given consideration to the possibility of the first vaccine being the cause, considering when the symptom occurred).

In the Lacomis article relied upon by the court, SFN is defined, “.paresthesias *with findings of small fiber dysfunction on exam*” and much more severe symptoms (burning, tingling, prickling, shooting pain, aching, numbness, tightness and coldness) (Ex. 2), *all* of which I suddenly developed days after the vaccine and none of which I had prior. In addition, the article describes symptoms as usually “distal and length dependent”, (starting in the toes/feet and gradually progressing upward), negating that one occurrence of a tingling (when sitting down and putting pressure against the back of my knee), would in any way indicate a pre-existing condition. The article lists causes of SFN as immune mediated or as related to other conditions, none of which I had, nor did I have any risk factors for. (Id.table p.3). There are no notations of symptoms in any of my medical records prior to the vaccine, other than hand numbness at night 10 years prior which was diagnosed as mild carpal tunnel in my right hand (Ex 1, p 9-10). This single report of a vague and unrelated symptom was determined by the court as evidence that I had pre-existing small fiber neuropathy, against the diagnosing neurologist’s opinion, who took the time to dictate a letter confirming this to the court (Ex.4,p.1-3). In addition, my primary care doctor of 10 years who cared for me several

years prior to the vaccine, on the actual day after the injury and for years after the injury, attested to the fact that this was *not* pre-existing in his letter (Ex.5).

It was also mentioned in the denial that 2 spells of dizziness (which both occurred as side effects to a new medication) and a short lived episode of premature heart beats (PVCs) four years prior to the vaccination (Ex 7) may mean that I had pre-existing postural tachycardia syndrome (POTS).

Lightheadedness is a symptom of POTS (as well as many other conditions), but dizziness is not, and is a very different symptom. Regardless, both reports of dizziness in my record were due to starting a new medication that I did not tolerate, and this is well documented. Dr. Rho in April 2008 states, "She started Lopressor three weeks ago and developed the dizziness three days later." (Ex 6, p 1, pp1). I had been ordered to stop the medication by cardiology due to the symptoms, which resolved shortly after this visit. My reaction to the beta-blocker (Lopressor) is also documented by cardiology in August 2008. "The patient had been tried on beta-blockers, but she had a severe reaction to this. She runs a baseline low blood pressure and I suspect she did not tolerate either the bradycardia or the hypotension." (Ex.7, p 3). In 2009, I was prescribed Tamiflu, (when diagnosed with the flu), which also caused dizziness, a known side effect of the medication (Ex.6,p.4). Dr. Rho states, "Last month she began taking Tamiflu and she experienced a migraine headache. Since then she has been having intermittent episodes of mild dizziness." (Id, p.3, pp1). In addition, the symptomatic association with Tamiflu was confirmed when I took it again in 2016. After one dose, I experienced the same symptoms and was forced to stop taking it. (Id.p 4-6)

It was also mentioned in the denial that symptoms I had from an ER visit in 2008 indicated that I had pre-existing POTS. Symptoms I had at that time (palpitations and associated transient lightheadedness/feeling faint) were from PVCs, a common and benign condition, hereditary for me. I did not require any treatment, other than reducing caffeine which resulted in immediate relief and after that, I was stable for 3-4 years before the vaccine. PVCs are not in any way related to, or precursors for postural tachycardia syndrome (POTS), which is caused by damage to autonomic nerves. The symptoms of PVCs and POTS are also completely different. PVCs cause palpitations, sometimes with transient lightheadedness when they occur, which quickly resolves after they happen. POTS has severe debilitating symptoms due to continuous tachycardia that occurs when standing, which is only relieved by lying flat. The court quotes from the Grubbs article relied upon, in an attempt to connect my prior symptoms to POTS, "Grubb states that individuals with POTS present with tachycardia, palpitations, tremulousness, nausea, sweating, and increased blood pressure" and "Grubb notes additional symptoms for POTS, including lightheadedness, near syncope, and syncope..". Omitted, was the hallmark feature of POTS in the article of "*orthostatic intolerance*" defined as "the provocation of symptoms on standing which are relieved when becoming supine" and the definition of POTS, "the presence of orthostatic intolerance symptoms associated with a heart rate increase of 30 beats per minute..within the first 10 minutes of standing up." Not only did I not have *any* of these symptoms, but my cardiac monitor in my 2008 reads, "no tachycardia" (Ex 9), yet the cardiac monitor from Dec 26, 2012- Jan 5, 2013 shows several instances of tachycardia (Ex 9, p.3-5). Regarding POTS, the court goes on to say "...with more than half of

patients suffering from migraine headaches.”.This detail actually refers only to those with a less common genetic type of POTS in the article (Id.pg 2). It *does* state,however, “Many patients will report an abrupt onset of symptoms after a febrile illness..as well as immunizations” (Id. pg 1, pp5). None of my cardiology records from 2008 - 2012 give any indication of this diagnosis (POTS) or any of it’s symptoms (Ex 7, p 1-10) Dr. Epstein, the arrhythmia specialist who diagnosed the PVCs in 2010 notes, “Since I saw her two years ago, the patient states that she has stopped caffeine and feels quite a bit better,” (Ex 7, p 7). My general cardiologist, Dr. Stone, who saw me days after the vaccination, noted the same and wrote a statement attesting to the fact that my symptoms prior to the vaccine were not in any way related to POTS (Ex 10, p 5-7). Dr. Epstein, the arrhythmia specialist, saw me again in Nov 2013. He noted the flu vaccine reaction and that he had not seen me in a few years. He also found that the tracings in my current event recorder appeared to be “inappropriate tachycardia” (which *is* characteristic of dysautonomia and POTS) (Ex 7, p 11-12).

All of the above details were emphasized in my motion for review (Ex C p 5, pp3 - p 7) and prior filings to the Special Master in an attempt to reopen my case. Yet, in his denial to reopen, he does not address or discuss any of the above information and concludes that he has “previously found facts” in denying the case which “will not be undone” (Ex B, p.15, pp 3) and that these facts were found,”primarily by reviewing the medical records, expert reports, and medical literature” (p.16, pp 26).

To note, both articles relied upon in my case by the court for small fiber neuropathy and POTS were outdated (2002 and 2005), (Ex 2, 8)..

Facts that were not considered in the original decision (Ex A):

My record clearly supports a vaccine reaction, beginning with the notes from Mass General Hospital Occupational Health Services on Dec.4, 2012, the VAERS report submitted by the provider who assessed me after the vaccine, the PCP visit the following day and ambulance to MGH with admission overnight,, the second ER visit a few days later for neuropathy (see all contemporaneous records Ex 11) and the many more ER visits and specialists to follow. I went from a completely healthy and active person to a very sick person overnight.

As mentioned in the history above, Dr. Chen, the first neurologist whom I saw, (2 and ½ weeks after the vaccine), misunderstood my account of events and as a result, made several errors in my clinical note: (my having trouble sitting down the following day, which did not occur until a couple of weeks later, the wrong side of the body and failing to mention my hospital admission or ER visit). But most damaging was his misunderstanding of my leg symptoms beginning immediately after the shot on Dec.4 rather than four days later, when they had actually occurred. The immediate symptoms I had (fast heart rate, increased blood pressure, feeling shaky, dizzy, chilled and throat thickening) are noted in the VAERS report filed by the NP who monitored me when the reaction occurred (Id. p 1) and in her clinical documentation (Id. p 5-6) as well as my PCP note (id.p.7-9),and.my hospital admission and ER visits, which documented the same (Id.p 10-20). There is no mention of leg symptoms until the second ER visit on Dec 8 (Id. p 21-26). All of these records were in the same hospital system as Dr. Chen and therefore accessible to him but apparently, they were not reviewed. He concludes, "It is hard to explain what could cause such a rapid response, except for a surge in

catecholamines. An immune reaction aside from an allergic response would typically take more time to develop. I thought about Guillain Barre, which tends to be bilateral and distal but also doesn't develop that quickly. It would be hard to connect to the flu shot, although temporally, it seems to be clearly associated." (Ex 12, p 1-2). As mentioned above, one week after seeing Dr. Chen, I saw Dr. Fischer, (who had Dr. Chen's report in hand) and redocumented this in the same way. (Ex12, p 3-5). I was shocked when I discovered this years later, realizing that because of this misunderstanding, I had lost the opportunity for treatment to counteract the acute neuropathy, which would have been likely to result in a complete recovery. Instead, I have now suffered a chronic condition for almost 10 years, which unfortunately, appears to be permanent - although I have not given up and always hold out hope for recovery. The court favored the credibility of my having "immediate" neurological symptoms based on the two outlying records (weeks after the event) and contrary to contemporaneous records (when the injury actually occurred) (Ex 11) and the remaining record going forward.

In addition to all of the above, the court did not acknowledge the multiple (new) abnormal findings on physical exams in my records following the vaccine, which not only indicated that an acute injury had occurred but also ruled out any possibility of this being a pre-existing condition. My lower extremity reflexes, which were always consistently 2+, (see Ex 12, pg 3-5). were suddenly abnormally elevated (and then declining) over the days and weeks following the vaccine. (PCP office on Dec 9, (4+), ER visit on Dec 24 (3+), neurology visit on Dec 27(2+) and again on Jan 22, 2013 (by the same neurologist) (1+) (Ex 13 p 2 &5), (Ex 12, p.3), (Ex 13, p. 9). Noted by Dr. Sen,

PCP, in 2013, "has decreased ankle reflexes bilaterally., Dr. Finn, internal medicine in 2014 "abnormal extremity reflexes, abnormal extremity sensation, extremity weakness" and Dr. Ropper, neurology in 2014 "As before, she is hypo-reflexic,has particular difficulty eliciting right bicep jerk, even with reinforcement".(Ex 14, p. 1-2 & 8). In addition, there were countless examples of muscle weakness on exams, worsening over time. (See details of quotes from the records in Motion for Review (Ex C, p.13-15) I have included the records from which they were referenced as well (Ex. 12, p 2) and (Ex.14, p. 3 - 33). When I did finally have EMG testing of my muscles in 2016 and 2017, there were abnormal findings (Ex 14, p 34-39) and pelvic dyssynergia in 2019 (Ex.14,p.49). Declining reflexes and muscle weakness are *not* clinical features of SFN (Ex.2 p.2) and *only* occur in an acute syndrome *with* SFN, as a variant of Guillain Barre Syndrome (Ex. 18, p 6-11). GBS is actually now a table injury under the National Vaccine Injury Compensation Program (Id.p.3).

All of this was presented to the vaccine court in my motions, including personal emails of my describing symptoms at the time of injury to a relative and to my cardiologist and a current statement written by my partner (Ex. 15, p.1-3).

By merely looking at the volume of my medical records before and after the vaccine, it is very apparent that my health status drastically changed on Dec 4, 2012. This alone indicates that an acute injury occurred, which also negates theories of pre-existing. In the few years prior to the vaccine,I had well visits and a couple of yearly specialist visits. In contrast, my record following the vaccine includes 4 hospitalizations, 15 ER visits and over 50 specialty visits in only the first year and a half (Ex 15, p.4-5). The fact that I had

a sudden change of health status on Dec. 4, 2012, is very clear, just by looking at my record in its entirety and noting the drastic change in my level of care.

4.) The Special Master admits that my attorney did not address my pre-vaccination history during my case but opines that this is not grounds for abandonment (even though I was not represented at all on the issue for which I was denied). He then comments "Ms. DiMasi did not address her pre-vaccination history in her motion for a ruling on the record or subsequent filings, although she did submit a copy of her original VAERS report, which states that the onset of an adverse event began two minutes after vaccination"(Id. pg 17, pp4). This statement is very misleading, because some symptoms *did* occur right after vaccination, but the whole issue is when symptoms of neuropathy began. In the VAERS reports filed on Dec 7, there is no mention of neuropathy because it had not yet happened (Ex.11, p. 1). These symptoms were not added until my update to the report on Dec 10 (Ex 11, p 3, pp1), and another update on Jan 7, 2013 (Id. p.3,pp2) (which is the document he refers to in relation to this comment, filed one month after the vaccine)..

In the opinion/order of the Motion for Review, the above facts are not discussed. It does state that, "An abuse of discretion exists when the trial court's decision is clearly unreasonable, arbitrary or fanciful, or is based on clearly erroneous findings of fact or erroneous conclusions of law." However, there is no discussion of the erroneous facts that were concluded in my case contrary to the totality of the evidence nor of my lengthy motion explaining this..

In the factual overview in the Decision to Deny Compensation of Nov.7, 2019 (Ex A, p.2), certain parts of my pre-vaccination documentation are discussed, while other more pertinent records are not mentioned (ie ER visits in 2008 for heart symptoms before I was diagnosed with PVCs but no records from the arrhythmia specialist who treated me or results from testing (Ex 7) (Ex.9). Peripheral neuropathy is listed on my problem list in 2008 (Ex A,p.2,pp 2), but does not add that this was carpal tunnel (Ex 1, p 9-10).

Dizziness is discussed in the paragraph relating to Dr. Rho's visit, without any facts added about new medications preceding the symptoms. (Ex A, pg. 2, pp 3). It is stated that I asserted a 2011 flu vaccine reaction in *later* records (2015) and not prior.

However, not only had my attorney stated this in his motions, but it is mentioned in almost all of my records following the vaccine reaction on Dec 4, 2012, including in the VAERS report (all in Ex 11).

The post vaccine timeline presented in the decision to deny compensation (Ex A, p.3, pp 4 - p 9), is missing several pertinent medical visits, including some contemporaneous documentation. (ie Clinical notes from the provider at MGH health services who monitored me immediately after the vaccine on Dec. 4, 2012, (Ex 11, pg 5-6) a visit to infectious disease, Dr. Olans, who noted a vaccine reaction on Dec 10 (Ex 13, p 3-4), an ER visit for autonomic symptoms Dec.24 (Id. p.5-6), a visit to my pcp in early Jan 2013 due to numbness in my pelvic area and unable to sit from sacral pain who noted diminished reflexes. In 2013, I had several visits to a neurologist, Dr. Ronthal, at Beth Israel in, who noted loss of reflexes and muscle weakness on exams (Ex 14, p.9-12) and neurologist Dr. Ropper at Brigham and Women's Hospital who noted the same and opined post vaccinal pandysautonomia) (Id.p.3-8). These visits are also not discussed.

The timeline actually stops one month after the vaccine and skips to a single visit over a year later in 2014, to a neurologist, Dr. Gorson (who specializes in Guillain Barre (GBS)). The discussion in the decision notes that he thought POTS could explain my symptoms but not that he said it was likely that I had GBS from the flu vaccine (id.p.16). The timeline then skips another year, and mentions a couple of visits who hypothesized alternative diagnoses in 2015. One of them, Dr. Vornisescu, was actually Dr. Ropper's resident (who saw me with him at his visit). Her documentation and differential of simplex is discussed but there is no mention of the actual attending and treating provider, Dr. Ropper, who opined, "Its is plausible that she had a limited form of post-vaccinal pandysautonomia."(Id.p.7) A one time visit to Dr. Shoap was discussed, which was irrelevant, because he was clearly incorrect in his hypothesis that it was "anxiety", based on my eventual abnormal skin biopsy and diagnosis. The timeline mentions these two irrelevant visits in 2015, but fails to mention all of the critical ones, which favored a vaccine reaction. Dr. Mark Fisher, a rheumatologist, who noted in 2014, "suspect immune mediated process precipitated by the vaccine" (Id. pg 18-25) and Dr. Cros, a neurologist whom I saw several times beginning in 2015 who found several abnormalities on exams and EMG testing, "Certainly an immune reaction, maybe even a demyelinating neuropathy, which has been subacute and is now becoming more chronic with recurrences" was in his differential (Id. note on p. 26-36, see p. 31). Also, Dr. Ruskin, cardiologist, in 2016 diagnosed SVT and inappropriate sinus tachycardia and notes ".a complex history of cardiac and neurological symptoms which came on following a flu vaccine".(Id.42-45). It appears that select records and excerpts from them to negate my claim were discussed, in absence of pertinent details that supported my

claim. .Additionally, information selected from some of those that were discussed in what appears to be an attempt to discredit my claim, were partial, and not inclusive of all material facts in the document or record. See important examples of this (Ex C, pg 16-17)..

Because of the omissions of important details and lack of any discussion of many pertinent records, it appears that material facts in the record were not considered and the decision was therefore made against the totality of the evidence. Despite my bringing to attention the above records and the pertinent facts within them that were overlooked, it was determined that I was not entitled to relief from judgement under any of the conditions of Rule 60. In the decision to deny reopening of my case, missing records were either marked "cumulative" or generically, with "although this document does not appear in the record, petitioner does not explain how ____ applies to the issues in her case." (Ex B, Appx). Quite to the contrary, I explained in great detail each piece of evidence and how it pertained to erroneous findings in the original decision. It appears that facts and details that I provided were not considered, since they were not acknowledged or discussed.

To note, because evidence proving my claim was omitted from the analysis ,(and because pieces of documentation in which alternate meanings could be insinuated to negate my claim were highlighted), I was lead to question the possibility of bias in favor of the opposing party in both the decision to deny compensation and in the subsequent denial for re-opening. .For this reason, I asked that a new Special Master be assigned if the Motion for Review was granted. However, this motion was also denied. In the decision of motion for review, similar assumptions were made and the facts in the

medical records which I described were not addressed (Ex D). A comment was made regarding Dr. Chen's note with the incorrect facts of symptom timing that I mentioned earlier, which stated " In reviewing the record, this Court is particularly troubled by petitioner's admission that she doctored her medical records to remove references to the symptoms she reportedly developed immediately after the administration of the December 4, 2012 vaccine." (Ex D, p 4, pp 2). This was *not* true and I was clearly misunderstood. I did not (and would never) "doctor" a medical record and I am not sure why this was inferred. When my attorney sent me the Rule 4 report, he included a copy of the note from Dr. Chen, (I assume to show the discrepancies of symptom timing). As explained previously, upon reading it, I was shocked by all of the errors. I let my attorney know this and made notations *on this copy* he had supplied me with for his own personal knowledge, so that he would have the correct information going forward in my case. This statement by the court that I admitted "doctoring my medical records" was untrue and upsetting, as it is a public discredit to my character.

5.) After the initial meeting, we had little discussion about the facts in my case. Prior to filing, he told me he was having trouble "piecing" the records together". In response, I sent him a description of how the injury had happened (Ex.16, p.1), to which he did not respond. (He was not very communicative with me on the details of my case. I often had to reach out to find out what was happening, as there were long stretches of not hearing from him, or his not responding to my emails or calls at times). After reading the Rule 4 report from the Secretary, I realized that there was misinterpretation of some of my prior medical history. In response, I sent him a note with details to fill him in, since

he had never given me a verbal opportunity to explain any of it to him. After receiving it he again, did not respond. He actually never discussed my pre-vaccination history with me or asked for any additional details, so I assumed that the statement had sufficed. However, he then chose not to correct or defend any of the false assumptions being made by the opposing party over the next 3 years prior to the decision in my case. I actually asked him if I could give oral testimony or a written statement to the court and he said I was "not able to", which I now know was not true. He apparently then declined this on my behalf without my knowledge or consent. He also failed to inform me of the option to submit a significant aggravation claim and declined this on my behalf, as well. (In addition to the acute neuropathy, I did also have unrelated stable conditions which were significantly worsened by the immune response that occurred). I have since learned that only one type of claim can be filed, so if that is true, I would *not* have opted to pursue this option. However, I had the right to know about my options and to have them presented to me by my attorney before declining them..

Mr. Gold filed an affidavit following my initial motion, in an attempt to defend his actions of failing to defend my pre vaccination history and declining options without my consent. He stated that I sent him "unsolicited statements" and eludes to "inconsistencies as the case met resistance from the Secretary".on my part. The decision denying relief from judgement of Nov.7, 2021 notes Mr. Gold's affidavit entry, and opines that my attorney was entitled to make decisions for me without informing me of them, referring to them as "tactical" or "ethical". There were no inconsistencies in my explanations, only misunderstanding due to Mr. Gold's lack of communication with me and certainly no basis to make an "ethical" choice. (See emailed statements dated 2015 (before the

case was actually filed) and 2018 (after it met “resistance from the Secretary”) (Ex 16, p.1-3). Each describes the sequence of events of my injury in exactly the same way. I assume he was either confused by the conflicting records from Dr. Chen and Fischer, which is understandable, or perhaps could not differentiate the major difference in the benign heart arrhythmia I had prior to the vaccine and the condition I developed afterward due to neuropathy (POTS). But instead of talking to me about it, he apparently made his own inferences and made decisions based on them. As my representing attorney, he had a duty to discuss all of this with me and give me the chance to clarify anything he was not understanding about both my medical history and the timeline of events of the injury, in order to be prepared to represent me in my case. Instead, he stayed silent failing to take the much needed time for a meeting with me. He did not inform me of the issue and made decisions without consulting me. As a result, I ultimately had no prepared defense for the issues for which I was denied and lost substantial rights to give testimony.

Lastly, my attorney caused me to lose the substantial right to appeal the decision of Nov. 7, 2019. He emailed me on Nov 11 to inform me of the decision. I called him by phone and he said he was “shocked” by the decision to deny based on pre-existing and he “did not see that coming”. (At this point, I did not know that he had actually not defended any of it). He said there was also a problem with causation because “POTS doesn’t happen that quickly from a vaccination”. I reiterated that I did *not* have symptoms of POTS until weeks later (ER visit 12/24/12, Ex.13, p.5-6) and that the initial fast heart rate I had was transient, from the adverse/allergic reaction from the vaccine, not from POTS. At this point it was clear to me that he did *not* have the story straight. I

asked if the decision could be appealed and he said to "give him time to look into it" and said he would get back to me. I followed up our conversation with an email the next day, sending resources on immune reactions to clarify what he did not seem to be understanding. I prefaced this email with, "I know you need a couple days to think, so feel free to read these after that" and ended by saying "I really feel strongly that I would like to appeal this... Please reach out to me when you are ready to discuss next steps." (Ex 17, p.1). He did not answer my email. I did not expect to hear back quickly, since his non-responsiveness was not unusual and Thanksgiving was the following week, so I waited patiently. After I had not heard back by Dec.11, I reached out again and he responded, saying that he looked into it and it "could not be appealed." (Unknown to me, at that point the deadline had already passed, which he never discussed with me or informed me of). I asked repeatedly for a copy of the decision, beginning on Nov 11, which he did not send to me for several months. After reading it, I realized he had not defended me or informed me of rights and missed my deadline. He never told me that I actually "could" have appealed it with other counsel or pro se when we spoke.

Mr. Gold's affidavit stated that he did not recall if he had discussed deadlines to appeal but that he had told me on the date that he informed me of the decision (Nov 11, 2019) that he "would not file an appeal." This was not true. My email the next day to him asking him to let me know next steps would not have been at all appropriate if that was the case (Ex 17). He may not have clearly recalled this phone call in the way in which I did, as he has many cases. But this was my *only* case and was extremely important to me. He *did* say that it "could only be appealed if there was a matter of law" and asked that I give him some time to look into this. Our second conversation on Dec 11, was

when he actually told me he had looked into it and there was “not a basis for appeal”. I was under the impression that nothing “could” be done, at that point because that was how he expressed it to me, and accepted this and thanked him for trying. I had no idea that something “could” have been done, but it was too late because the deadline had passed. Although there was a lack of timeliness with Mr. Gold, I would not have expected that he would not inform me of my rights or miss a deadline.

I submitted several other emails between myself and Mr. Gold, and an affidavit stating the above (Ex.17, p.2-5). However, the court chose to believe the attorney had informed me on Nov 11 that he “would not file an appeal”, despite my email the following day, which was in direct conflict with this assumption, not in any way indicating that was what I had been told. I would not have spent the following day researching articles to share with him for purposes of appealing my case and asking him to let me know “next steps”. Instead, I would have immediately inquired about other options. I certainly would not have continued to follow up with him and await his reply for four weeks, if he told me he “would not appeal”. It was also opined by the court that I did not, “diligently pursue my rights” by seeking other options. I was under the representation of Mr. Gold at the time, he had informed me of the decision and told me he would get back to me regarding the appeal. There was not any reason for me to seek other options, as I was appropriately relying on the expertise of my counsel. I was certainly diligent in pursuing my rights by promptly inquiring about an appeal, following up the next day with an email emphasizing my wish to appeal and sending him documentation to support my case - and then reaching out to him again when I did not hear back from him. I have painstakingly taken on a great burden and learning curve by attempting to understand

federal rules and in composing several motions in order to preserve my rights and correct the injustices that occurred in my case. I believe this wholly demonstrates that I am not in any way a person who would not diligently pursue her rights. The decision to deny this justifiable cause for relief was again, not based on the correct facts.

6.) Facts were determined incorrectly and conclusions were made against the weight of the evidence. Medical records (most importantly the contemporaneous records) indicated that a vaccine injury had occurred, far beyond a preponderance of evidence. In addition, findings of fact were made against the totality of the evidence. Discussion was given to non-pertinent records in what appears to be an effort to negate my claim, while material records with facts which supported my claim were not included in the analysis. Select parts of the medical literature were chosen to support the decision while important facts in them, which would negate the court's factual findings were omitted. Lastly, my attorney declined my substantial right to testify without my consent, despite my asking to do so and then failed to address any of my pre-vaccination history during my case. When given an opportunity to present a final argument against false interpretations made by the opposing party, he chose not to respond, leaving me virtually unrepresented on the issue for which I was denied. He then failed to get back to me regarding my appeal, missing the deadline, and forfeiting my right to appeal the decision.

After bringing this information to the Special Master in an attempt to show that the wrong decision had been made in my case, there was no acknowledgment of factual

errors. Instead, more incorrect facts were found regarding my dealings with my attorney and my motion was denied..

I submitted a motion for review, which included all of the above information. However, the incorrect facts regarding the communication between myself and my attorney were adopted and according to the opinion, the actions/inactions of my attorney did not meet criteria for my being "effectively misled or abandoned". Regarding the factual errors in the decision, there was virtually no discussion, other than the following "...in reviewing a special master's factual determinations, the court may only set them aside if they are arbitrary and capricious. The court reviews a special master's discretionary rulings under an abuse-of-discretion standard." (Ex.D, p.3). Then, the erroneous inference of my "doctoring of medical records" is noted to support the decision, stating, "...it was inappropriate and underscores the Special Master's finding that the vaccine was not the causation-in-fact of her symptoms" and "Further, petitioner's pre-vaccine symptoms were documented in petitioner's medical records prior to December 2012. Put simply, the Special Master's factual findings on this issue are neither arbitrary nor capricious" (Id.p.4, pp2).

Relying only on reported "symptoms" (which can exist for many reasons), over and above the actual documented diagnoses made by treating providers, is not a reliable or appropriate way to make a factual finding. Nor is selecting certain excerpts from medical literature of "symptoms" to support a finding, while ignoring the other pertinent details in the literature that invalidate that finding. The Special Master opined that a similar *symptom* to POTS (*without* hallmark features) meant that I had POTS since 2008, even though the cardiologist diagnosed something completely different. And

concluded that a transient symptom on one occasion, meant that I had pre-existing small fiber neuropathy, despite the fact that the treating physician did not diagnose me with this. Interestingly, my sudden and severe “symptoms” after the vaccine and countless medical appointments following were *not* considered by the court to be indicative of an injury. Neurologist Dr. Bhattacharyya confirmed my diagnosis after testing as “acute small fiber neuropathy analogous to Guillain Barre Syndrome” most likely caused “from post-vaccination injury”. Apparently, the court disagreed with the diagnosis of this highly respected neurologist who evaluated me. In addition, it was concluded that two records (from weeks later) were more reliable in determining the material facts of symptom onset than the actual contemporaneous documentation by 7 medical professionals over the first 4 days of the injury, or the VAERS report filled out by the provider who evaluated me at the time of injury. This is also not an accurate or logical way to determine facts, particularly those that greatly affected my case..

Due to the many exceptional circumstances above, justice was not served in my case. I would like to request a reversal of the decision and an award for compensation under the National Vaccine Injury Compensation Program, if this is in the jurisdiction of this court or of the vaccine court. Otherwise, I ask that under conditions of Rule 59 or 60, that relief from judgement be granted, so that my claim can be reconsidered in an equitable and just manner. .

Sincerely,

A handwritten signature in black ink, appearing to read 'Stephanie DiMasi', with a stylized, flowing script.

Stephanie DiMasi