

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

(Filed: June 27, 2003)

IN RE: CLAIMS FOR VACCINE INJURIES *
RESULTING IN AUTISM SPECTRUM *
DISORDER OR A SIMILAR *
NEURODEVELOPMENTAL DISORDER * AUTISM MASTER FILE
*
VARIOUS PETITIONERS, *
*
v. *
*
SECRETARY OF HEALTH AND *
HUMAN SERVICES, *
*
Respondent. *
*

AUTISM UPDATE AND ORDER--JUNE 27, 2003

This Update describes a number of recent developments in the Omnibus Autism Proceeding that have occurred since the last Update dated May 9, 2003. I note that counsel for both parties and I have continued to work diligently on the Proceeding during that time period. Status conferences were held on May 29, 2003,¹ and June 19, 2003, while counsel were also working extensively with one another throughout this period, in order to keep the Proceeding moving forward.

A. Petitioners' Steering Committee

As noted in the previous Update, the Petitioners' Steering Committee has obtained office space in Washington, D.C., to assist in analyzing the extensive discovery material. Contact information, including a new "fax" number, is as follows:

¹Counsel participating in those conferences included Jeffrey Thompson and Ghada Anis for petitioners, Vincent Matanoski and Mark Raby for respondent.

Petitioners' Steering Committee
733 15th Street, N.W.
Suite 700
Washington, D.C. 20005

Phone: (202) 393-6411
Email: Ghada@AutismPSC.com
Fax: (202) 318-7518

B. Discovery

As indicated in my previous Autism Updates, a tremendous amount of work has been done by counsel for both parties concerning the petitioners' extensive discovery requests. I will not reiterate developments covered in my previous updates, but I will summarize below our progress and certain new developments in the discovery area.

1. Much material responsive to the petitioners' extensive Requests for Production was made available to petitioners during the fall of 2002 via various government web sites, and petitioners' counsel have analyzed that data. Extensive additional material has been supplied to petitioners over the last several months, in large batches produced on December 23, January 6, January 21, January 22, January 27, February 26, March 11, April 18, and May 1, May 7, May 13, May 28, June 3, and June 10, and petitioners' counsel are in the process of analyzing those extensive documents as well. Several additional batches are scheduled to be delivered soon. At this point, the respondent has now essentially finished compliance with all of the petitioners' Requests for Production, except for the items discussed at points 2 and 3, immediately following.

2. One category of documents requested, pursuant to petitioners' Requests for Production Nos. 10 and 12, involves vaccine license applications. In this area, efforts to produce material are proceeding more slowly, due in part to the massive amount of material involved, and in part to the cumbersome procedures required under the law for disclosure of material submitted by vaccine-makers during the licensing process. The process of production of that material continues to move forward. One large group of documents was recently forwarded to petitioners, and additional batches of material are now nearing the point of production.

3. As previously indicated, the parties have been in disagreement concerning the issue of production of materials relating to certain ongoing and proposed studies. However, the parties have engaged in efforts to resolve that issue. They intend to inform me within the next week as to whether those efforts have been successful; if not, a hearing will soon be scheduled.

4. Because the *first round* of discovery in this Proceeding is not yet complete, the parties have jointly requested that we postpone certain deadlines for the potential *second round* of discovery, which was to have recently begun, pursuant to the Master Scheduling Order that was attached to the Autism General Order #1 filed on July 3, 2002. Those deadlines are hereby postponed by another

60 days each, with the goal being that the second round of discovery can be shortened from its current projected duration, so that the entire discovery process can still be completed by the scheduled date.

5. Finally, I again state my impression that all parties involved have been working very hard on these discovery issues. It is clear that a huge effort involving a number of government agencies has taken place, in an effort to provide a thorough response to the discovery requests. A massive amount of material has already been provided, and I continue to perceive that both sides are acting very diligently, and in good faith. I note that in those areas where discovery is not yet complete, opposing counsel continue to work amicably with each other with the goal of completing production cooperatively. The parties have not yet reached an impasse concerning any issue that they have needed to present to me for formal resolution, although I am ready to do so if they need me. My role in the discovery process, thus far, has mainly been to work informally with the parties to foster their cooperative efforts. I extend my thanks to all counsel involved for their tremendous efforts, as well as their cooperative attitudes, in these difficult matters. I further note that all counsel, as well as myself, are doing everything in our power to expeditiously conclude discovery matters so that we can comply with the projected schedule for conclusion of the Omnibus Autism Proceeding.

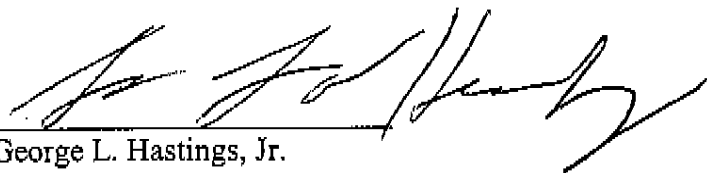
C. Issue of "Judgments"

I note that the special masters are considering the overall issue when "judgments" should be entered in Vaccine Act cases. To assist this review, I hereby request the views of both respondent and the Petitioners' Steering Committee concerning whether a judgment should be entered in each of the following situations:

1. The petitioner files a notice of dismissal prior to the respondent's "Rule 4 report"--see Vaccine Rule 21(a).
2. The parties file a joint stipulation of dismissal--see Vaccine Rule 21(a).
3. After the respondent has filed a "Rule 4 report," the petitioner files a unilateral motion for dismissal *without* prejudice, and the special master grants the motion.
4. After the respondent has filed a "Rule 4 report," the petitioner files a unilateral motion for dismissal, and the special master files an order dismissing the petition *with* prejudice.
5. The special master dismisses the petition *without* prejudice for failure to prosecute--see Vaccine Rule 21(b) and (c).
6. The special master dismisses the petition *with* prejudice for failure to prosecute--see Vaccine Rule 21(b) and (c).

7. After the special master files a formal notice under 42 U.S.C. § 300aa-12(g), the petitioner files a notice of withdrawal of the petition pursuant to 42 U.S.C. § 300aa-21(b).

Such views should be filed by July 25, 2003.



George L. Hastings, Jr.
Special Master