

ORIGINAL

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS

FILED
NOV 14 2003
U.S. COURT OF
FEDERAL CLAIMS

IN RE: CLAIMS FOR VACCINE *
INJURIES RESULTING IN AUTISM *
SPECTRUM DISORDER, OR A SIMILAR *
NEURODEVELOPMENTAL DISORDER, *

Autism Master File

Various Petitioner(s), *

**NON-PARTY MERCK & CO.'S
MOTION FOR INFORMATION
RE DISCOVERY TO DATE**

v. *

SECRETARY OF HEALTH AND *
HUMAN SERVICES, *

Respondent. *

Pursuant to Vaccine Rules 15 and 20, Merck & Co., Inc. ("Merck") files this motion for access to information regarding discovery responses that have been propounded in the Omnibus Proceeding and in support thereof states as follows:

1. Petitioners have filed a Motion to Issue Revised Third Party Subpoena ("Motion"), seeking sweeping discovery from Merck, which is not a party in this matter. Merck is filing contemporaneously herewith a Response to Petitioners' Motion. In that Response, Merck explains that the Vaccine Act does not allow broad-based discovery against a vaccine manufacturer and that Petitioners have failed to show (as the Vaccine Act and the Vaccine Rules require) that issuance of the subpoena is "necessary" to determining the narrow causation issue in this Omnibus Proceeding.

2. For reasons set forth in Merck's Response, one hurdle that Petitioners must overcome in showing necessity is that they must persuade the Special Master that the information already available in this proceeding is insufficient for a

proper resolution of this matter as contemplated by the Vaccine Act. Obviously, the available information includes information that has already been produced to Petitioners in discovery. Because this factor is relevant to the analysis of Merck's rights in connection with Petitioners' Motion, Merck's lack of access to that information unfairly handicaps the company in presenting its position to the Special Master. Merck therefore is entitled to knowledge regarding the discovery that Petitioners have received to date, and more detailed information about the discovery process to date.

3. Accordingly, in order that it can address completely Petitioners' Motion, Merck asks that the Special Master grant it access to the following:

- All interrogatory responses provided to Petitioners in connection with this Omnibus Proceeding, including responses to Petitioners' Interrogatories and Requests for Production of Documents, filed August 2, 2002 ("Requests for Production");
- All documents made available to Petitioners as part of this Omnibus Proceeding, including all documents produced pursuant to Petitioners' Requests for Production and all documents from the Centers for Disease Control regarding the "Stehr-Green study";
- All pre-publication data from the Thimerosal Screening Analysis which has been made available to Petitioners;
- Transcripts of any depositions taken in connection with this proceeding; and
- Detailed information regarding the discovery process to date, including Petitioners' objections to any redactions in the Product License Applications and

any explanations offered by them as to why the redacted material is "necessary" to determining the causation issue.

- Any other materials provided in discovery to Petitioners.

4. Merck incorporates by reference its Response to Petitioners'

Motion.

Date: November 14, 2003



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