

ORIGINAL

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS
(Filed: January 16, 2004)

FILED
JAN 16 2004
U.S. COURT OF
FEDERAL CLAIMS

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

 VARIOUS PETITIONERS, *

 v. *

 SECRETARY OF HEALTH AND *
 HUMAN SERVICES, *

 Respondent. *

AUTISM MASTER FILE

SCHEDULING ORDER

An unrecorded telephonic status conference was held on January 15, 2004. Participating were Michael Williams, Thomas Powers, and Ghada Anis for the petitioners, along with Vincent Matanoski and Mark Raby for the respondent. At the time for discussion of the petitioners' pending motion for discovery from Merck & Co., we added the following participants: Dino Sangiamo, attorney for Merck, and four attorneys representing other vaccine manufacturers: Bradley Wolff, representing Aventis Pasteur; Daniel Thomach, representing Wyeth; Stacey Martinez, representing GlaxoSmithKline; and Lee Davis Thames, representing Baxter. Pursuant to discussion at that conference, I hereby Order as follows:

1. Merck discovery

Concerning the Merck discovery issue, as discussed at the conference, the Petitioners' Steering Committee shall file, no later than February 12, 2004, an expert report or other evidentiary submission supporting the allegation that their requested discovery from Merck is "necessary" to my resolution of the causation issues in the Omnibus Autism Proceeding. In that filing, the Committee shall state whether the Committee desires to also present oral testimony in support of their attempt to demonstrate "necessity." That submission shall be filed with the Court and served on respondent, and a courtesy copy shall be sent directly to my office. However, as discussed, due to the nondisclosure provision of 42 U.S.C. § 300aa-12(d)(4)(A), the submission should not be served on the vaccine manufacturers until after consultation with the special master. (A status conference involving only the respondent and the Committee has been scheduled for February 5, 2004, at


2:00 p.m. Eastern (11:00 a.m. Pacific), to discuss the disclosure issue, as well as other Omnibus Autism Proceeding matters.)

A telephonic status conference concerning the Merck discovery issue, involving all those attending the January 15 conference, has been scheduled for February 19, 2004, at 2:00 p.m. Eastern (11:00 a.m. Pacific) time. Further, the date of March 2, 2004, has been set aside for oral argument and possibly also an evidentiary hearing.

As also discussed, as to the issue of "burden," Merck's counsel has indicated that Merck will prefer to submit a written filing rather than oral testimony. A date for such written submission has not been scheduled, but at the February 19 conference Merck should be ready to commit to a date soon thereafter.

2. Other matters

As discussed, respondent shall file by January 23, 2004, a submission addressing the issues concerning (1) the Thimerosal Screening Analysis ("TSA") and (2) the pending organizational deposition requests. As to the TSA issue, the Committee will file a motion to compel by February 27, 2004, and the respondent will respond thereto at a time yet to be specified.



George L. Hastings, Jr.
Special Master