

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

(Filed: May 9, 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--MAY 9, 2003

This Update describes a number of recent developments in the Omnibus Autism Proceeding that have occurred since the last Update dated April 2, 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 April 17 and May 5, 2003,¹ while counsel were also working extensively with one another in between these conferences, in order to keep the Proceeding moving forward.

A. Petitioners' Steering Committee

The Petitioners' Steering Committee has obtained office space in Washington, D.C., to assist in analyzing the extensive discovery material. Contact information is as follows:

¹Counsel participating in those conferences were 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

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, and petitioners' counsel are in the process of analyzing those extensive documents as well. Several more large batches are scheduled to be delivered this month. At that point, the respondent will have 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 proceeds 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, and a large amount of material should soon be disclosed.

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, and believe that they are close to reaching an amicable resolution of that disagreement. They will soon inform me as to whether those efforts have been successful.

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 30 days each, with the goal being that the second round of discovery can be shortened from its

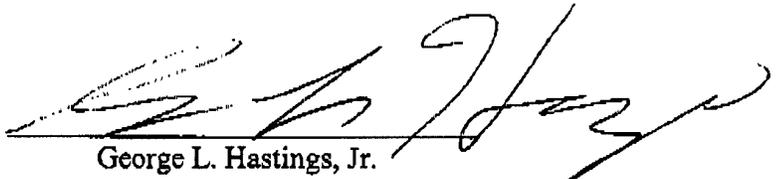
current projected duration, so that the entire discovery process can still be completed by the scheduled date.

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. "Motions for Appropriate Relief"

I note that a controversy has recently arisen concerning those autism cases in which the petitioner utilized a "short-form petition." In each of those cases, respondent has filed a motion entitled a "Motion for Appropriate Relief." In each motion, respondent requests that I rule that the 240-day period prescribed in 42 U.S.C. § 300aa-12(d)(3)(A)(ii) does not begin to run until the petitioner has filed all of the records set forth at 42 U.S.C. § 300aa-11(c)(2). For purposes of these motions, the lead case has been *Stewart v. HHS*, No. 02-819V. Extensive briefs concerning the issue have been filed in that case, by the Stewarts' counsel, the respondent, and the Petitioners' Steering Committee from the autism cases. Final briefs are due in *Stewart* on May 19, 2003, and I hope to rule on that motion in *Stewart* soon thereafter.

Meanwhile, in the other short-form petition autism cases, some counsel have been asking whether they need to respond to the respondent's "Motion for Appropriate Relief" in each case. My answer is that they are not required to do so. I will fully consider the issue in the *Stewart* case, and then determine whether to apply that ruling, if appropriate, to the other autism short-form petition cases.



George L. Hastings, Jr.
Special Master