

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

(Filed: September 25, 2002)

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

**AUTISM MASTER FILE
Not for publication**

VARIOUS PETITIONERS, *

v. *

SECRETARY OF HEALTH AND *
HUMAN SERVICES, *

Respondent. *

AUTISM UPDATE AND ORDER---SEPTEMBER 25, 2002

The chief purpose of this Update and Order is to inform autism claimants of the progress of discovery matters in the Omnibus Autism Proceeding. Several other matters are discussed briefly at the end of this document.

1. Discovery

As indicated in my Autism Update of September 4, 2002, on August 2, 2002, the Petitioners' Steering Committee filed an extensive discovery request, consisting of interrogatories and requests for production, designed to elicit from various government agencies material that may be relevant to the general causation issue. On September 3, 2002, respondent filed a formal response to the petitioners' discovery request. (Copies of both these documents have been filed in the Autism Master File.) I have begun the process of working with both sides to see if agreement can be reached as to these discovery requests, and to resolve any disputes if full agreement cannot be reached.

On September 10 and September 17, 2002, I held status conferences with attorneys from both sides to extensively discuss the discovery issues.¹ I was informed that the two sides have been working together intensively on the discovery matters. Respondent has identified certain requested material that is already available for inspection by petitioners at certain Internet websites, and has agreed to produce much additional material. As to other items, the parties are working cooperatively to clarify and narrow the discovery requests in a fashion that will allow respondent to produce further material. Petitioners' counsel are also studying the objections that respondent has raised as to additional items.

The parties have agreed to proceed as follows over the next three weeks. Petitioners' representatives will examine the material already available on the websites. The parties will work to agree upon, and submit to me, a procedure and schedule for production of certain other materials. Actual production of such materials will begin as soon as possible. The respondent will also produce a written description of materials that respondent proposes to withhold from production on various privilege grounds, and the parties will engage in further negotiations aimed at resolving those privilege claims.

In light of the complexity and wide scope of the discovery requests, the progress being made, and the parties' beliefs that they can resolve many points cooperatively, the parties jointly stated that they do not see a need for an evidentiary hearing concerning discovery issues on October 8, 2002, as currently scheduled. They believe that they can agree upon many points, and do not yet know which items, if any, will require a ruling by me. The parties believe that an evidentiary hearing may be necessary at a later date, but that such a hearing would not be helpful or productive on October 8. They stress, in this regard, that postponing an evidentiary hearing on discovery disputes will not delay the next stage of the master schedule for the Omnibus Autism Proceeding (that schedule was attached to the Autism General Order #1 filed on July 3, 2002). That next stage, when petitioners file any *supplemental* discovery requests arising from the first round of discovery, is scheduled to take place on February 3, 2003. The parties agree that they will be able to complete the first round of discovery in sufficient time so that any supplemental discovery requests can be submitted by that date. They anticipate that if an evidentiary hearing concerning the first round of discovery is needed, it will be possible to conduct it later this fall, still providing ample time for my rulings on any discovery disputes to be implemented before the next discovery round begins.

Based upon these representations and requests by both parties, I have agreed to postpone the evidentiary hearing currently scheduled for October 8. Instead, on that day I will conduct another status conference, so that the parties can update me on the progress of their cooperative efforts. Before that conference, the parties shall supply to me their agreed schedule for document production, and respondent shall supply to me and to petitioners the description of any materials to be withheld on privilege grounds. At that conference on October 8, 2002, we will select a new date for an evidentiary hearing on any disputed discovery matters.

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

I emphasize that, as the parties have agreed, this delay in the discovery evidentiary hearing will not be permitted to delay the overall schedule for completing the first round of discovery. I remain firmly committed to adhering to the master schedule for the entire Omnibus Autism Proceeding.

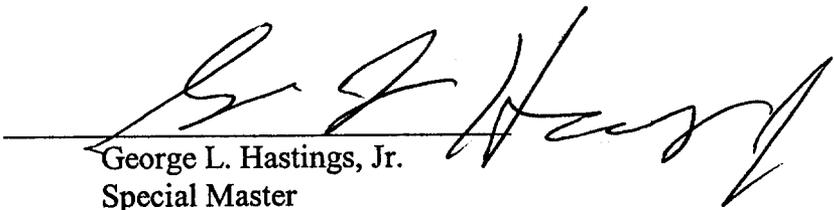
2. Petitioners' Steering Committee

The petitioners' representatives have reported that the Petitioners' Steering Committee will soon be expanded to include additional counsel. (Counsel desiring to serve on the Steering Committee should contact committee member Ghada Anis, *not* my office or the Court. See Ex. D to Autism General Order #1 for contact information.) Pursuant to agreement of the parties, stated at the September 17 conference, I hereby amend Autism General Order #1 concerning the requirement for service of papers by respondent. Henceforth, respondent need serve copies only on the two designated lead counsel for the petitioners, not on all Steering Committee members. Those lead counsel will, in turn, distribute the information to other members of the Petitioners' Steering Committee.

Also, the Clerk of this court is hereby instructed that the Clerk's office shall send my own Autism Master Filing filings only to the two *lead counsel* for petitioners, as well as the two lead counsel for respondent.

3. Promulgation of information concerning Omnibus Autism Proceeding

All participants in the September 17 conference agreed that it is desirable to make all documents concerning the Omnibus Autism Proceeding as accessible as possible to those unable to visit the office of the Clerk of this court to personally examine the Autism Master File. Accordingly, a small committee (consisting of Ms. Anis, Mr. Raby, and Office of Special Masters staff attorney Marci Thomas) will be working to include on this court's website both a docket sheet for the Master Autism File and copies of other documents in the file that are not already available electronically. I anticipate that a docket sheet and additional documents will soon be available on that website. Further, I will continue to file, and place on the website, periodic updates concerning the Omnibus Autism Proceeding. The next such update will likely follow soon after the above-mentioned status conference scheduled for October 8, 2002. Interested persons may access the portion of this court's website dedicated to the Omnibus Autism Proceeding at www.uscfc.uscourts.gov/osm/osmautism.htm.


George L. Hastings, Jr.
Special Master