

SEP 29 2003

U.S. COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

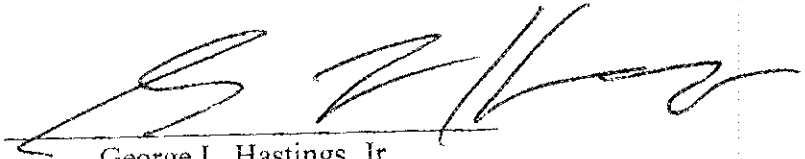
(Filed: September 29, 2003)

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.	*	
	*	

ORDER RELATING TO "JUDGMENTS" ISSUE

With respect to the "judgments" issue, addressed in the briefs filed by respondent on July 30, 2003, and the Petitioners' Steering Committee on August 22, 2003, I see a potential problem with the statutory interpretation urged by respondent. The problem concerns the issue of *appellate review* of Vaccine Act rulings. 42 U.S.C. § 300aa-12(d)(3)(A) provides that a "decision" of a special master may be reviewed by the United States Court of Federal Claims. Further, 42 U.S.C. § 300aa-12(f) provides for review by the U.S. Court of Appeals for the Federal Circuit of a "judgment" of the Court of Federal Claims. Thus, if the term "decision" is limited as respondent has argued, does that mean that a petitioner cannot obtain review by a judge of the Court of Federal Claims of a special master's ruling dismissing a petition for failure to prosecute, or a ruling dismissing the petition because it was untimely filed? Similarly, if a special master dismisses a petition for failure to prosecute or untimely filing, and no "judgment" is entered thereafter, would that lack of a "judgment" mean that review by the Federal Circuit may not be obtained? Is there any way to logically interpret the statutory scheme to restrict the entry of "judgments" as respondent urges, yet still provide petitioners with a method to obtain review, by both the Court of Federal Claims and the Federal Circuit, of those special master rulings that dismiss a petition for failure to prosecute or for untimely filings? (In this regard, respondent may wish to clarify respondent's prior answer to my scenarios #5 and 6.)

As discussed at the September 17 status conference, I request that the written views of both respondent and the Petitioners' Steering Committee on these questions be included in the briefs requested by my Order filed on September 9, 2003. The due date for such briefs is hereby extended until October 15, 2003.



George L. Hastings, Jr.
Special Master