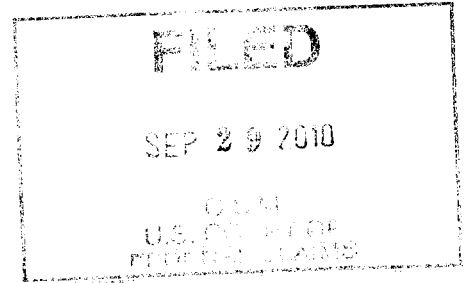


# In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

(Filed: September 29, 2010)



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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<sup>1</sup>**

## AUTISM UPDATE--SEPTEMBER 29, 2010

This Update describes a number of recent developments in the Omnibus Autism Proceeding (“OAP”) that have occurred since the last Autism Update, issued on May 20, 2010. Since that last Update, we conducted an unrecorded telephonic status conference in the OAP on July 23, 2010. Important developments related to OAP since that previous Update include (1) the affirmance of the *Cedillo* ruling by the Federal Circuit, as will be noted in part I below; (2) this court’s upcoming Judicial Conference and additional Vaccine Act-related activities in Washington on October 26-27

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<sup>1</sup>The Autism Master File constitutes the record of the Omnibus Autism Proceeding. The complete File is maintained by the Clerk of this court, and is available for inspection by the parties. An electronic version of the File is maintained on this court’s website. This electronic version contains a complete list of all documents in the File, along with the full contents of most of those documents; the exception is that the content of some documents has been withheld from the website due to copyright considerations or due to 42 U.S.C. § 300aa-12(d)(4)(A). To access this electronic version of the Autism Master File, visit this court’s website at [www.uscfc.uscourts.gov](http://www.uscfc.uscourts.gov). From the court’s “Home” page, click on the “Vaccine Info” page, then on the “Autism Proceeding” page, then on the “Docket of Omnibus Autism Proceeding” page.

(see part II below); and (3) ongoing discussions concerning how to resolve the cases remaining in the OAP in light of the resolution of the OAP “test cases” (see part III below).

## I

### PROCEEDINGS IN THE “TEST CASES”

#### A. *Petitioners’ first theory*

As explained in previous Autism Updates, the Petitioners’ Steering Committee (PSC) presented two different theories of “general causation” in the Omnibus Autism Proceeding, designating three “test cases” for each of those two theories. Accordingly, during 2007 we conducted hearings in three “test cases” with respect to the PSC’s *first* “general causation” theory, *i.e.*, the theory that MMR vaccines and thimerosal-containing vaccines can combine to cause autism. On February 12, 2009, each of three special masters issued a decision in the test case assigned to that special master. Special Master Campbell-Smith issued the decision in *Hazlehurst v. Secretary of HHS*, No. 03-654V, 2009 WL 332306 (Fed. Cl. Spec. Mstr. Feb. 12, 2009). Special Master Vowell issued the decision in *Snyder v. Secretary of HHS*, 01-162V, 200 WL 332044 (Fed. Cl. Spec. Mstr. Feb. 12, 2009). Special Master Hastings issued the decision in *Cedillo v. Secretary of HHS*, 98-916V, 2009 WL 331968 (Fed. Cl. Spec. Mstr. Feb. 12, 2009).

Later, each of those three “test case” decisions was affirmed, in separate rulings by three different judges of this court. On July 24, 2009, Judge Wiese affirmed the *Hazlehurst* decision. *Hazlehurst v. Secretary of HHS*, 88 Fed. Cl. 473 (2009). On August 6, 2009, Judge Wheeler affirmed the *Cedillo* decision. *Cedillo v. Secretary of HHS*, 89 Fed. Cl. 158 (2009). And on August 11, 2009, Judge Sweeney affirmed the *Snyder* decision. *Snyder v. Secretary of HHS*, 88 Fed. Cl. 706 (2009).

The petitioners in the *Hazlehurst* and *Cedillo* cases filed notices of appeal to the U.S. Court of Appeals for the Federal Circuit. (The petitioners in *Snyder* did not.) On May 13, 2010, a three-judge panel of that appellate court issued an opinion in *Hazlehurst* affirming the rulings below. On August 27, 2010, a different three-judge panel of that same appellate court issued an opinion in *Cedillo* affirming the rulings below.

The petitioners in *Hazlehurst* did not seek *certiorari* from the Supreme Court. And on September 28, 2010, counsel for the Cedillos reported to this office that the Cedillos have also decided not to seek *certiorari* in their case.

#### B. *Petitioners’ second theory*

The PSC’s *second* causation theory was that thimerosal-containing vaccines alone can cause autism. As to that theory, we conducted evidentiary hearings in 2008. On March 12, each of the three special masters issued a decision in the test case assigned to that special master. Special

Master Campbell-Smith issued the decision in *Mead v. Secretary of HHS*, No. 03-215V, 2010 WL 892248 (Fed. Cl. Spec. Mstr. Mar. 12, 2010). Special Master Vowell issued the decision in *Dwyer v. Secretary of HHS*, No. 03-1202V, 2010 WL 892250 (Fed. Cl. Spec. Mstr. Mar. 12, 2010). Special Master Hastings issued the decision in *King v. Secretary of HHS*, No. 03-584V, 2010 WL 892296 (Fed. Cl. Spec. Mstr. Mar. 12, 2010).

The petitioners in those three cases did not exercise their options to seek review of those decisions. Accordingly, on April 14, 2010, final judgments were entered in all three cases.

## II

### **JUDICIAL CONFERENCE AND VACCINE-RELATED ACTIVITIES ON OCTOBER 26-27**

On October 27, 2010, the U.S. Court of Federal Claims will conduct its annual Judicial Conference in Washington, D.C., this year including a “Supreme Court Reception” at the Supreme Court on the evening of October 27, 2010. The Office of Special Masters encourages all Vaccine Act attorneys to participate fully in that Judicial Conference. Details are available on this court’s website.

In conjunction with the formal Judicial Conference on October 27, on the previous day, October 26, there will also be proceedings of special interest to Vaccine Act petitioners, all of which will take place at the court.

Specifically, at 2:00 p.m., there will be a panel discussion with three autism special masters, Patricia Campbell-Smith, Denise Vowell, and George Hastings, in which they will discuss the possibilities for resolving the remaining cases in the OAP.

Further, at 5:00 p.m., on the evening of October 26, the Court will host a reception in the Dolley Madison House (a part of the court’s complex) honoring Gary Golkiewicz for his 21 years of service as Chief Special Master. We all look forward to this opportunity to honor Gary and recognize his unique contribution to the Vaccine Program.

## III

### **DISCUSSIONS AND PROCEEDINGS CONCERNING REMAINING OAP CASES**

As described above in part I of this Update, all of the court rulings in the six test cases described above have found no causal link between autism and MMR vaccines and/or thimerosal-containing vaccines. Further, the PSC has informed the special masters that no additional OAP test cases are contemplated.

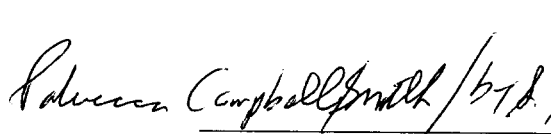

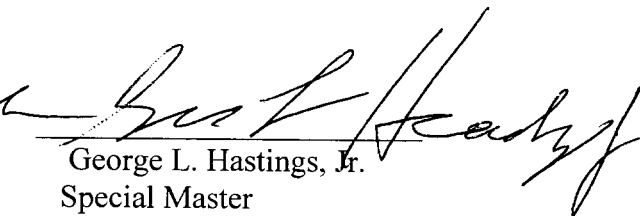
Therefore, the Office of Special Masters has begun discussions with members of the petitioners' bar and respondent's counsel about how best to conclude the approximately 4,700 autism cases remaining open on the court's docket. To aid in that process, some petitioners' counsel have contacted all of their OAP clients to advise them of the results in the test cases and to recommend a course of action with regard to their claims. Additionally, all petitioners who are not represented by counsel have been ordered to inform the court either that they wish to dismiss their claim or that they intend to proceed with their case. For petitioners who wish to continue with their claim, orders to identify a theory of causation, produce an expert report, and file additional evidence will follow. Petitioners' counsel who have not yet done so are encouraged to contact their clients and determine how their clients wish to proceed.

The issue of attorneys' fees and costs for petitioners' counsel is part of the discussion about how to conclude proceedings on the OAP petitions. Mediation efforts are underway to develop methods to resolve the fees and costs issues, and a report on the progress in these talks is expected at the October judicial conference.

IV

**FURTHER PROCEEDINGS**

We continue to meet regularly with the representatives of both the PSC and respondent, to discuss any ongoing issues concerning the Omnibus Autism Proceeding. We will continue to issue these Autism Updates describing that process. In addition, those interested in following the course of events, in between these Updates, should continue to check our Autism Proceeding webpage. The next status conference in the Omnibus Autism Proceeding is scheduled for October 6, 2010.

		
Patricia Campbell-Smith Special Master	Denise Yowell Special Master	George L. Hastings, Jr. Special Master