

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

(Filed: October 8, 2003)

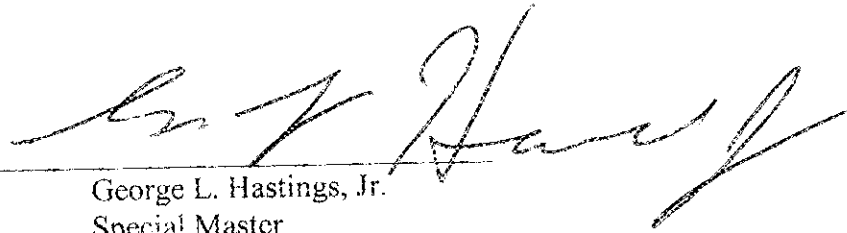
FILED
OCT 8 2003
U.S. COURT OF
FEDERAL CLAIMS

 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

ORDER PLACING RESPONDENT'S FILINGS CONCERNING STEWART INTO MASTER FILE

The attached two documents were filed by the respondent in the individual autism Vaccine Act case of Stewart v. Secretary of HHS, No. 02-819V. These two documents set forth the respondent's position concerning the procedural issue that I decided in the opinion entitled Stewart v. Secretary of HHS, No. 02-819V (Fed. Cl. Spec. Mstr. Sept. 3, 2003) (published citation not yet available). (That Stewart opinion itself was placed into the Autism Master File by my Order dated September 9, 2003.)



George L. Hastings, Jr.
Special Master

ORIGINAL

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS

FILED

JAN 30 2003

U.S. COURT OF
FEDERAL CLAIMS

KIM STEWART, Parent of HEATH
STEWART, a Minor,

Petitioner,

v.

SECRETARY OF HEALTH AND HUMAN
SERVICES,

Respondent.

No. 02-819V
Special Master Hastings

MOTION FOR APPROPRIATE RELIEF

On December 30, 2002, the Special Master issued an Order refusing to require petitioner to comply with the documentation requirements of 42 U.S.C. § 300aa-11 of the Vaccine Act at this time. Respondent now moves for appropriate relief in light of that Order. Specifically, respondent asks the Special Master to consider the effect of his decision on the withdrawal provisions set forth under 42 U.S.C. § 300aa-21(b) of the Act. Under the Special Master's plan not to process any "short-form" petitions until after the conclusion of the omnibus general causation inquiry (see Order Denying Mot. to Dismiss at 11) petitioners' right to withdraw from the Program would accrue long before the Special Master ever enforced the documentation requirements of section 11. As such, unless section 21(b) is construed as set forth below, all petitioners filing short-form petitions, such as that filed by petitioner here, would be permitted to withdraw without ever having complied with these requirements. This result is contrary to the language of sections 21(b) and 11 and would undermine fundamental Program goals. Accordingly, respondent asks the Special Master to hold that, for purposes of determining a petitioner's withdrawal rights, short-form

petitions unaccompanied by the documentation required by section 11 do not yet comply with section 11 and therefore do not constitute "petition[s] filed under section 300aa-11" within the meaning of section 21(b) of the Act.¹

I. INTRODUCTION

The Secretary's goal in filing this motion is to effectuate Congress's intent that the Program have an opportunity to consider a vaccine injury claim before the claimant may proceed with a civil action. Cf. Order Denying Mot. to Dismiss at 9 (noting "the clear Congressional intent that these claims be adjudicated under the Program"). The Secretary does not wish to overwhelm the Court with voluminous records or to force petitioners to expend effort for no useful purpose. See id. at 10-13. Nor does the Secretary wish to disqualify petitioners who have filed short-form petitions in reliance on the Autism General Order #1 from participating in the Program due to their incomplete filings. The Special Master's plan, however, would frustrate Congress's intent and undermine the integrity of the Program by allowing petitioners to deprive the Program of the

¹ Respondent does not now contend, however, that this petition must necessarily be dismissed "immediately." Order Denying Mot. to Dismiss at 6. While the Secretary reserves his argument that the Special Master had no authority to authorize short-form petitions and that these petitions are subject to dismissal if their defects are not cured, deficiencies in pleadings may generally be cured and "[t]he timing of a supplemental complaint . . . does not ordinarily defeat an action that was initiated during the limitations period, even if the initial complaint was defective." Black v. HHS, 93 F.3d 781, 792 (Fed. Cir. 1996) citing Intrepid v. Pollock, 907 F.2d 1125, 1130 (Fed. Cir. 1990) (post-limitations supplemental pleading held sufficient to cure defective complaint filed during limitations period).

opportunity to adjudicate their claims and then to invoke the Program's inability to adjudicate their claims as a ground to withdraw from the Program.

II. ARGUMENT

The Special Master's plan not to process thimerosal/autism cases until the conclusion of the omnibus general causation inquiry will cause irreparable harm to the Program if it is not reconciled with the withdrawal provisions of section 21(b). The Special Master's intent not to enforce the documentation requirements of section 11 until after causation issues are decided would permit short-form petitioners to withdraw from the Program without ever complying with these documentation requirements. Yet the Program cannot consider a petitioner's claim until the petitioner submits the documentation required by section 11; the short-form petition does not provide nearly enough information to enable the Secretary or the Special Master to evaluate a claim. Cf. Order Denying Mot. to Dismiss at 8 ("As respondent points out, the instruction contained in § 300aa-11(c), that a petitioner file a detailed petition accompanied by all relevant medical records, was obviously designed to enable the special master to promptly evaluate and rule upon the claim."). Allowing a short-form petitioner to withdraw from the Program without ever giving the Program an opportunity to consider his or her claim would frustrate Congress's intent that the Program provide a meaningful alternative to traditional civil actions and would turn the Program into a meaningless, 240-day speed bump for claimants seeking to pursue a civil action.

A. The Vaccine Act's documentation requirements, timetable for decisions, and petitioners' opportunity to withdraw from the Program are interconnected.

The Act requires petitioners to file supporting affidavits and medical records at the same time they file their petitions. 42 U.S.C. § 300aa-11(c). The Act imposes these requirements in the context of describing how a proceeding under the Act is initiated. 42 U.S.C. § 300aa-11(a)(1) ("A proceeding for compensation under the Program . . . shall be initiated by service upon the Secretary and the filing of a petition containing the matter prescribed by subsection (c)") (emphasis added). Once a petition is filed "under section 300aa-11 of [the Act]," the clerk is directed to transfer the case to the Chief Special Master to initiate proceedings. 42 U.S.C. § 300aa-12(d)(1). Special masters then conduct proceedings on the petition. 42 U.S.C. § 300aa-12(d)(1). Special masters are obliged to reach a decision on a petition within 240 days (up to 420 days with appropriate extensions). 42 U.S.C. § 300aa-12(d)(3)(A)(ii).

Petitioners' right to withdraw from the Program and pursue a civil action corresponds exactly to the Special Masters' deadline for reaching a decision. 42 U.S.C. § 300aa-21(b)(1) ("[a petitioner may withdraw if] a special master fails to make a decision on [a] petition within [the time required by 42 U.S.C. § 300aa-12(d)(3)]"). And, section 21(b) specifically links petitioners' right to withdraw from the Program back to the initial obligation to file a petition "under section 300aa-11 of [the Act]" - the provision that imposes the petition documentation requirements.

These provisions must be read and enforced as a comprehensive whole.

When the legislative purpose is incorporated in a complex piece of legislation, such as those establishing a major regulatory or entitlement program, the meaning of any particular phrase or provision cannot be securely known simply by taking the words out of context and treating them as self-evident.

Amendola v. HHS, 989 F.2d 1180, 1182 (Fed. Cir. 1993). In applying the statutory language, the special masters are "constrained by the fundamental obligation of the judicial branch to implement, not rethink, the purpose of the legislative branch." Id. As the Federal Circuit has recognized, there can be no doubt as to Congress's purpose in enacting the Vaccine Act:

Congress'[s] purpose is both clear and clearly evidenced by the statutory framework. The statute provides a strong bias in favor of bypassing the civil litigation route in favor of compensation claims under the Act.

Id. at 1184. In fact, the Act's centerpiece is its prohibition against filing civil actions against vaccine manufacturers or administrators until after petitioners "exhaust" their remedy through the compensation program. See 42 U.S.C. § 300aa-11(a)(2)(A); Shalala v. Whitecotton, 514 U.S. 268, 270 (1995) (claimant alleging injury after Act's effective date "must exhaust the Act's procedures" before filing "any de novo civil action in state or federal court"). In establishing the Program, Congress made clear its intent that a claimant first must "go through the compensation program" before going to court:

While the bill does not prohibit a vaccine-injured person who has completed compensation proceedings from going on to court, the system is intended to lessen the number of lawsuits against manufacturers. Toward this end, the bill requires that a person with an injury resulting from a vaccine that was administered after the enactment of this legislation file a compensation petition and go through the compensation program before

proceeding with any litigation against a manufacturer.
If, however, after compensation proceedings are complete, a vaccine-injured person elects to reject the system's findings and award and go on to court, he or she is free to do so.

H.R. Rep. No. 99-908, 99th Cong., 2d Sess. 12 (1986), reprinted in 1986 U.S.C.C.A.N. 6353 (emphasis added); see also H.R. Rep. No. 100-391, 100th Cong., 1st Sess. 696 (1987), reprinted in 1987 U.S.C.C.A.N. 2313-370 ("claims for injury or death associated with a vaccine administered on or after October 1, 1988, must complete compensation proceedings before pursuing tort remedies").

Thus, by design, Congress predicated petitioners' right to withdraw on an exhaustion of their responsibility to file and pursue a petition in the Program. The Special Master is obliged to interpret and enforce the Act's filing requirements and withdrawal provisions in a manner consistent with Congress's purpose of favoring Vaccine Program proceedings over civil litigation. Cf. Order Denying Mot. to Dismiss at 6 (asserting that "the presiding special master in each Program case has discretion to regulate the procedure in order to further the goals of the Program") (second emphasis added). Respecting Congress's clear intent that a petitioner "go through" the Program before going to court requires interpreting section 21(b)'s withdrawal provisions in harmony with section 11's filing and documentation requirements. Petitioners should not benefit from their noncompliance with the Act's documentation requirements by withdrawing from the Program without undergoing meaningful review, in violation of congressional intent.

- B. The timetable for withdrawing a petition under section 21(b) of the Act does not commence until the requirements of section 11 are met.

Setting aside the Secretary's disagreement with the Special Master regarding the proper timing of filing the necessary documents, the Secretary urges that compliance with the requirements of section 11 is a precondition to initiating the timetable for effecting a withdrawal under section 21(b). The language of the Act supports this interpretation because section 21(b) predicates a petitioner's ability to withdraw from the Program on the condition that he or she have filed "a petition . . . under section 300aa-11." Section 21(b) provides:

Authority to bring actions.

* * *

(b) A petitioner under a petition filed under section 300aa-11 of this title may submit to the United States Court of Federal Claims a notice in writing choosing to continue or to withdraw the petition if - [the special master fails to make a timely decision or the Court of Federal Claims fails to enter judgment within the time period set by the Act].

* * *

42 U.S.C. § 300aa-21 (emphasis added). Hence, the timetable for petitioners' opportunity to withdraw from the Program is linked specifically to section 11, which provides that vaccine proceedings "shall be initiated by service upon the Secretary and the filing of a petition containing the matter prescribed by subsection (c) of this section with the United States Court of Federal Claims." 42 U.S.C. §300aa-11(a)(1) (emphasis added). Subsection (c), of course, contains the documentation requirements which, all agree, petitioner has not met.

The foregoing statutory language must be "construed in such

fashion that every word has some operative effect." U.S. v. Nordic Village, 503 U.S. 30, 36 (1991). Section 21(b)'s specific reference to section 11 indicates that compliance with section 11, including its documentation requirements, is required to commence the withdrawal timetable. As such, filing a purported petition in complete disregard of section 11's filing and documentation requirements is insufficient. Congress clearly envisioned that section 11 would be complied with at the time of filing when it devised the Act's time sequences. Because Congress required in plain terms that a petitioner file his or her supporting documentation at the time of filing the petition, Congress did not anticipate the situation, presented here, in which a special master has permitted petitioners to file a petition containing none of "the matter prescribed by subsection (c)" of section 11, 42 U.S.C. § 300aa-11(a), and in which such documentation will not be required for a period of at least two years.

Accepting, arguendo, that a special master may authorize such petitions, the specific reference in section 21 to section 11 must be given "some operative effect." Nordic Village, 503 U.S. at 36. In the Secretary's view, Congress's language reflects its emphasis upon compliance with the substantive requirements of section 11, and not the mere ministerial act of filing a petition in disregard of those requirements, as a pivot for initiating the section 21(b) timetable. This congressional emphasis makes perfect sense, because without compliance with section 11's documentation requirements, the Secretary and the Special Master lack sufficient information to consider a petition. Accordingly, the timetable under section 21(b) does

not begin until a petition is filed in compliance with section 11.²

C. The short-form petitions and two-year timetable for resolving causation issues threaten to frustrate the Vaccine Act's design and purpose.

Unless section 21(b) is construed as urged by the Secretary, the Special Master's plan not to process short-form petitions until after the conclusion of the omnibus general causation inquiry would create a loophole that allows petitioners to withdraw from the Program without ever complying with the Act's basic filing requirements. The Autism General Order #1 gives the Special Master a two-year (730 day) time period for resolving initial causation issues relating to thimerosal petitions -- well beyond the 240 days (or even 420 days) set by the Act for reaching a decision on compensation under section 12(d)(3)(A)(ii). In the absence of steps to enforce the filing requirements during this time, or an effort to reconcile such a plan with the withdrawal provisions of section 21, petitioners would be permitted to withdraw from the Program long before they met their statutory obligation to document their claims. Such withdrawals would prevent the Secretary and the Special Master from ever considering the substance of these petitions.

Section 21(b) must be interpreted to implement Congress's "strong bias in favor of bypassing the civil litigation route in favor of compensation claims under the Act." Amendola, 989 F.2d

² The Secretary emphasizes that not all the medical records always must be filed to comply with section 11. The Act provides an exception for records that are unavailable, and permits a petitioner to satisfy section 11 by filing an affidavit explaining such unavailability. 42 U.S.C. §300aa-11(c)(3).

at 1184. Moreover, the Special Master is required to "seek to avoid construing a statute in a way which yields an absurd result and should try to construe a statute in a way which is consistent with the intent of Congress." Hellebrand v. HHS, 999 F.2d 1565, 1570-71 (Fed. Cir. 1993); see also Best Power Technology Sales Corp. v. Austin, 984 F.2d 1172, 1175 (Fed. Cir. 1993) (stating that "[w]e are not prepared to accept an interpretation of the statute" that "could undermine the procurement authority which the Brooks Act gives to GSA").³

Congress's plain and fundamental intent in creating the Vaccine Program was that vaccine injury claims be considered first by the Program before any claimant could pursue a civil action. Congress's will would be frustrated if a petitioner were permitted to deprive the Program of any opportunity to consider his claim by failing to file necessary documentation and by then using the Program's inability to adjudicate his claim within 240 days as a basis for withdrawing on day 241. It is one thing to allow petitioners to use the short-form petition format as part of a comprehensive plan to process all of these cases through the Program, but the Special Master must take steps to ensure that these petitions are not improperly used as a means to circumvent

³ For the reasons set forth herein, the language of the Act supports the Secretary's position that the timetable for withdrawal under section 21(b) is linked to compliance with section 11's documentation requirements. Even if the plain statutory language did not support this interpretation, authority exists to reject an interpretation of a statute which would frustrate its basic purpose. U.S. v. Ron Pair Enterprises, Inc., 489 U.S. 235, 242 (1989) (literal application of statutory language not controlling if "plain" interpretation "will produce a result demonstrably at odds with the intention of its drafters") (internal quotations and citation omitted).

the Program. Such a course would contravene Congress's purpose of favoring proceedings under the Act over private civil actions by reducing the Program to little more than a 240-day waiting room. The Vaccine Act is "a complex piece of legislation" that "create[d] a major Federal compensation program." Amendola, 989 F.2d at 1182. The Special Master should reject the notion that Congress created the Program only to allow it to be rendered ineffectual by such a loophole. Cf. Nordic Village, 503 U.S. at 35 (rejecting reading of one provision that would "reduce[]" other statutory provisions "to trivial application").⁴

III. CONCLUSION

The Special Master's decision not to require short-form petitioners to satisfy the Act's documentation requirements until after the conclusion of the omnibus general causation inquiry

⁴ The Special Master's decision recognizes that it is petitioners who have sought the ability to opt in to the Omnibus Autism Proceeding by filing merely a short-form petition and who stand to benefit from the "relatively time-consuming procedure" being utilized in the general causation inquiry. Order Denying Mot. to Dismiss at 11. This Order seems to assume that most short-form petitioners will remain in the Program until the conclusion of the omnibus general causation inquiry and then will actually attempt to "prov[e] their cases" in the Program. Id.; see also id. at 9 (asserting that petitioners should "be given a chance in Program proceedings to demonstrate the merits of their claims"). The Secretary agrees that petitioners should be given this chance to pursue their claims through the Program. The Special Master's assumption that petitioners wish to pursue these claims through the Program, however, may be incorrect. Many short-form petitioners initially filed civil actions and filed their Program petitions only after those civil actions were dismissed as premature. See id. at 8-9 (agreeing that "all claims of the sort involved in the Omnibus Autism Proceeding must be filed in the Vaccine Program") (emphasis in original). Many such petitioners still may wish to pursue civil actions and may plan to opt out of the Program as soon as they are able to do so.

threatens to frustrate Congress's intent in creating the Program unless that decision is reconciled with the Act's provisions governing withdrawal from the Program. Respondent respectfully requests that the Special Master grant appropriate relief to further Congress's intent that vaccine injury claims be considered first by the Program before a claimant may pursue a civil action. Respondent requests that the Special Master issue an order holding that short-form petitions are not yet "filed under section 300aa-11 of [the Act]" for purposes of section 21(b) and stating that the Special Master will not issue a notice under section 12(g) until 240 days after such time as the requirements of section 300aa-11 have been met. The Secretary notes that the short-form petition in this case was filed on July 18, 2002, and therefore will reach 240 days in March 2003. Accordingly, a prompt decision in this matter is requested.

Respectfully submitted,

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Dated:

CERTIFICATE OF SERVICE

I certify that on this 30th day of January, 2003, a copy of respondent's MOTION FOR APPROPRIATE RELIEF was served, by first class mail, postage prepaid, upon:

Ronald C. Homer
Conway, Homer & Chin-Caplan, P.C.
16 Shawmut Street
Boston, MA 02116

A handwritten signature in cursive script, appearing to read "Tanya Fawcett", is written over a horizontal line.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS

RECEIVED
MAR 31 2003
U.S. COURT OF
FEDERAL CLAIMS

KIM STEWART, Parent of HEATH
STEWART, a Minor,

Petitioner,

v.

SECRETARY OF HEALTH AND HUMAN
SERVICES,

Respondent.

No. 02-819V
Special Master Hastings

FILED MAR 31 2003

RESPONSE TO PETITIONER'S REPLY TO
RESPONDENT'S MOTION FOR APPROPRIATE RELIEF

On January 30, 2003, respondent urged the Special Master not to commence the statutory time frame for proceedings on a petition until the materials specified by 42 U.S.C. § 300aa-11(c)(2) are received. Specifically, respondent requested that the Special Master compute the time for issuing the notice of petitioner's right to withdraw from the Program from the date the materials specified in the Act are filed. Respondent's Motion for Appropriate Relief ("Resp. Mot. App. Relief"), at 7, citing 42 U.S.C. §§ 300aa-11(a)(1) and 21(b). In response, petitioner urged that the motion be denied, asserting her belief "that a special master has the discretion to decide, on a case-by-case basis, whether an injured person can withdraw from the Program and file a civil action after 240 days." Petitioner's Reply to Respondent's Motion for Appropriate Relief ("Pet. Reply"), at 16. As discussed below, petitioner's objections and interpretation of the Act are without merit.

Argument

On August 15, 2002, respondent filed an objection to the "short-form" petition filed in this case. It contended that these petitions violate the Act's requirement that a petition

shall contain certain documentation and affidavits. Respondent's Motion to Dismiss, at 2-3; citing 42 U.S.C. §§ 300aa-11(c)(1) and (2). The Special Master finally ruled on this issue on December 30, 2002, concluding that he "will not" require petitioners to file any of the documentation required by 42 U.S.C. § 11(c) "at this time." Order Denying Motion to Dismiss, at 10.

In response to that ruling, respondent filed a motion for appropriate relief, asking the Special Master to consider the effect of short-form petitions on the withdrawal provisions of 42 U.S.C. § 300aa-21(b). Specifically, respondent urged that the timetable for withdrawing a petition must not commence under the Act until a petition is filed containing the materials specified in 42 U.S.C. § 300aa-11(c). Resp. Mot. App. Relief, at 7.¹

Petitioner argues in response that respondent's motion would "depriv[e] special masters of the broad discretionary powers granted by Congress." Pet. Reply, at 19. In particular, petitioner contends that "a special master has the discretion to decide, on a case-by-case basis, whether an injured person can withdraw from the Program and file a civil action after 240 days." Id., at 16 (emphasis added). Petitioner cites no statutory authority for this assertion, and it is clearly wrong. There is no reference in the Vaccine Act to any discretionary power in any of the provisions relating to petitioners' withdrawal right. In fact, paradoxically, petitioner has

¹ In respondent's view, the Vaccine Act requires that all documentation be filed in the original petition and that the timetable for determining a petitioner's opportunity to withdraw the petition begins at that time. It is only because the Special Master has refused to enforce the filing requirements that an issue has arisen regarding the appropriate onset of that timetable for these deficient petitions.

construed the Act against her own interests. Petitioner's opportunity to withdraw under section 21(b), once the timetable has run, is a matter of right and not subject to the Special Master's discretion. The only issue here regards the appropriate timetable for when that right accrues. On that issue, petitioner's brief is silent.²

Respondent continues to maintain that the Special Master has exceeded his authority and violated the Vaccine Act by allowing short-form petitions. Without withdrawing that primary argument, respondent asked in his motion for appropriate relief that the Special Master rule on a related issue. That is, if short-form petitions are accepted, when would the timetable begin for determining petitioners' opportunity to withdraw such petitions? In respondent's view, Congress clearly envisioned that the 240-day period provided under section 21(b) would not begin until the materials specified in section 11(c) are received. Resp. Mot. App. Relief, at 7-11. The filing requirements of section 11 are specifically incorporated by reference into the timetable provisions of section 21(b). Accordingly, that timetable does not commence until the filing requirements are met. To do otherwise would allow petitioners to withdraw a short-form petition, without ever having met the requirements of section 11. Such a result would frustrate Congress's purpose of providing a meaningful alternative to traditional civil actions and would turn the Program into a meaningless, 240-day delay for claimants

² To the extent petitioner is suggesting that the Special Master has discretion to issue 12(g) notices or to permit petitioners to withdraw from the Program at any time other than specified by the Act, the suggestion must be rejected for lack of any statutory support whatever.

seeking to pursue a civil action.

Were there any doubt about Congress's intentions on this point, it is removed by the legislative history. Section 11 was modified in 1989. The Conference report reflects that 11(c)(2) was added in order to specify the minimum materials which "must be included in the original petition to the Claims Court in order to initiate a compensation proceeding."³ H.R. CONF. REP. No. 101-386, at 513, *reprinted* in 1989 U.S.C.C.A.N. 3116 (emphasis added). The report also reflects Congress's anticipation:

that petitions for compensation can be reviewed by the Court for completeness under these standards and that the statutory time frame for compensation proceedings will commence from the receipt of a petition containing the specified materials.

H.R. CONF. REP. No. 101-386, at 513, *reprinted* in 1989 U.S.C.C.A.N. 3116 (emphasis added). This makes clear that Congress did not want special masters to start the clock for Vaccine proceedings until after the materials specified by the Act are provided.⁴

³ This requirement was made subject to the affidavit exemption of section 11(c)(3), but that exemption is only available so long as "petitioner makes a good faith effort to supply records and name unavailable ones." H.R. CONF. REP. No. 101-386, at 515, *reprinted* in 1989 U.S.C.C.A.N. 3118.

⁴ The legislative history also shows clearly that section 11(c)(2) was crafted by Congress in 1989 to contend with the problem of petitioners "fail[ing] to include adequate information in initial petitions" H.R. CONF. REP. No. 101-386, at 512, *reprinted* in 1989 U.S.C.C.A.N. 3115 (emphasis added). Having balanced petitioners' interests against the Secretary's need to substantively review petitions, Congress compiled a list of records which would constitute the minimum requirement for a petition. *Id.*, at 513, 514, 3116, 3117. At the risk of belaboring respondent's argument regarding the legal sufficiency of short form petitions, the short-form petition procedure

(continued...)

Conclusion

In light of the foregoing, the Secretary requests that the Special Master issue the notice required by section 12(g) of the Act no sooner than 240 days after receipt of the materials specified in 42 U.S.C. § 300aa-11(c).


Respectfully submitted,

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Dated: MAR 31 2003

⁴(...continued)
discards Congress's compromise by exempting petitioners from providing any documentation at all with their petitions. As argued in respondent's original motion, the Office of Special Masters has no authority to reformulate the Vaccine Act in this way.

CERTIFICATE OF SERVICE

I certify that on this 31st day of March, 2003, a copy of Respondent's **RESPONSE TO PETITIONER'S REPLY TO RESPONDENT'S MOTION FOR APPROPRIATE RELIEF** was served, by first-class mail, postage pre-paid upon:

Jeffrey Scott Thompson
c/o Conway, Homer & Chin-Caplan, P.C.
16 Shawmut Street
Boston, MA 02116

Melissa A. Pachikara