

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

FILED

JUL 18 2006

O S M
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.

**PETITIONERS' PROPOSAL RE
GENERAL CAUSATION
PROCEEDINGS**

AUTISM MASTER FILE

Special Master George Hastings

INTRODUCTION

In an Order dated August 11, 2005, Special Master Hastings ruled that the Petitioners' Steering Committee ("PSC") would be obliged to present its case for general causation in the Omnibus Proceeding no earlier than the end of 2006. In status conference calls since then, the PSC informed the Special Master and respondent that the petitioners in fact would present a proposal for a general causation hearing to take place in the first half of 2007. The PSC now respectfully submits its proposal for the conduct and timing of the general causation hearing in the Omnibus Autism Proceeding.¹ The PSC does not presume to tell the Special Master how to conduct proceedings under his jurisdiction, but offers these proposals to suggest a fair, efficient and open process for addressing the significant scientific and medical issues of general causation presented by the claims in the Omnibus Proceeding.

¹ Although captioned as the Omnibus *Autism* Proceeding, the PSC notes that the proceeding is not limited strictly to autism cases, but includes other neurological and neurodevelopmental injuries as described in general Order No. 1.

TIMING

The PSC proposes to present its case for general causation in June 2007. Given the number of petitioners' testifying experts who hold academic teaching positions, hearings after the conclusion of the academic year would be most practical and create the fewest conflicts for many of the experts. A June 2007 hearing would also provide the parties ample time to complete the designation of their expert witnesses and prepare and submit them to the Special Master, further allowing time for the Special Master to review the submissions in advance of the hearings. Hearings in June—during the traditional summer school recess—would also give petitioners' families an opportunity to attend. The PSC anticipates the hearing will take approximately 2-3 weeks, as detailed below.

LOCATION

There are approximately 5000 claims in the Omnibus Proceeding, representing 5000 families who each have a stake and a high level of interest in the outcome of this process. Having waited so long for the science to ripen and for an opportunity to put on their collective case for causation, many families have expressed a very, very strong interest in attending the hearings. In order to accommodate the daunting travel logistics of these thousands of families scattered across the country, the PSC proposes that the hearing be conducted more towards the geographic center of the country, rather than in Washington, DC, making attendance easier for many of the petitioners and their families. The PSC therefore proposes that the hearings be conducted in Houston, TX or Chicago, IL, and the PSC is certainly open to discussing other potential sites central to either coast.

The PSC also notes that the hearings will need to be held in a facility large enough to accommodate a significant number of petitioners' family members, with the likely need for simultaneous closed-circuit or webcast broadcast for those unable to attend in person.

PROCEDURE

The PSC proposes that each side simultaneously exchange expert reports approximately 60 days before the first day of the hearing.

The PSC further proposes that the hearing be conducted in a manner similar to causation hearings in the program, with additional suggestions for handling the number of anticipated witnesses. The PSC proposes that the hearings begin with the petitioners and respondent, in turn, offering opening statements. The petitioners' experts would then testify in sequence upon direct examination by PSC attorneys, with each witness subject to cross-examination by respondent and inquiry by the Special Master. The PSC would reserve the right to redirect any witness.

At the conclusion of the petitioners' witnesses, the PSC proposes that the respondent then put on its witnesses immediately, in sequence, subject to the same rules as governed the appearances of the petitioners' witnesses. As the party bearing the burden of proving causation, the PSC reserves the right to present rebuttal witnesses if need be. At the conclusion of the respondent's witnesses, the PSC and respondent would each offer closing arguments, with the PSC reserving a rebuttal statement.

Petitioners anticipate calling as many as 12 witnesses to testify. Petitioners therefore believe that placing time limits on the testimony of each witness is crucial to the efficient and timely progress of the hearing. Petitioners anticipate limiting testimony to no more than two hours on direct, and one hour on cross-examination, for each witness offered by either party. In this way, the proceeding should conclude within 2-3 weeks, providing each side ample opportunity to fully present its case, and ample time for the Special Master to inquire of each witness as needed.

Petitioners plan to present all relevant theories of causation in this single hearing, whether they relate to thimerosal, the MMR vaccine, or an interaction between the two, as causes of the neurological injuries at issue.

Finally, petitioners strongly object to any proposal that would bring consideration of individual cases or claims into this hearing on general causation. The PSC believes that this hearing should focus solely on issues of general causation, without attempting to apply those general scientific propositions to individual cases or claims.

PUBLIC PROCEEDING


The PSC strongly believes that the general causation hearing should be as open and transparent as possible. To that end, petitioners plan to actively invite families of children with claims in the program to attend, in person or "virtually" via webcast or broadcast as mentioned above. Petitioners also believe that the hearings should be open to the media and to the public generally, and the PSC will therefore object to any efforts by respondent to limit attendance at the hearing.

The PSC therefore respectfully submits its proposal for the general causation hearing as outlined above, and the PSC representatives look forward to working with the Special Master and the respondent to design conduct the hearing in a fair, efficient and open manner.

DATED this 17th day of July, 2006

WILLIAMS LOVE O'LEARY CRAINE & POWERS P.C.

By:



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CERTIFICATE OF SERVICE

I hereby certify that on July 17 2006, I served the foregoing **PETITIONERS' PROPOSAL RE GENERAL CAUSATION PROCEEDINGS** on the following individual(s):

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