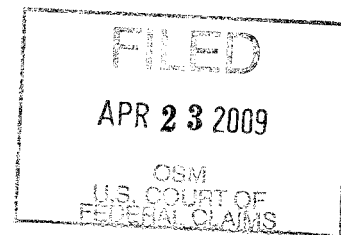


ORIGINAL

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

(Filed: April 23, 2009)



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

AUTISM MASTER FILE<sup>1</sup>

VARIOUS PETITIONERS, \*

v. \*

SECRETARY OF HEALTH AND \*
HUMAN SERVICES, \*

Respondent. \*

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AUTISM UPDATE--APRIL 23, 2009

This Update describes a number of recent developments in the Omnibus Autism Proceeding ("OAP") that have occurred since the last Autism Update, issued on September 30, 2008. Since that last Update, we have held unrecorded telephonic status conferences in the OAP on October 7, November 7, and December 3, 2008, and January 7, March 18, and March 30, 2009. And, of course, the most important development in the OAP during that period was the issuance of the decisions in the first three "autism test cases" on February 12, 2009.

<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. 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.

***A. Proceedings in the “test cases” concerning petitioners’ first theory of general causation***

As explained in previous Autism Updates, the Petitioners’ Steering Committee (PSC) originally stated its desire to present three different theories of “general causation” in the Omnibus Autism Proceeding, but later pared that to *two* different theories. The PSC designated 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. Specifically, in June we conducted an evidentiary hearing concerning the first “test case,” *Cedillo v. HHS*, No. 98-916V, with Special Master Hastings presiding. In the second case, *Hazlehurst v. HHS*, No. 03-654V, a hearing was held before Special Master Campbell-Smith in October, and in the third case, *Snyder v. HHS*, No. 01-162V, a hearing was held in November before Special Master Vowell. After the conclusion of those three hearings, the parties engaged in a lengthy process of filing written briefs analyzing the evidence in each of the three cases. The last of those briefs was filed in May of 2008.

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). In each case, the special master ruled contrary to the petitioners’ causation claim. Those decisions are posted on this court’s website.

On March 16, 2009, in each of the three cases the petitioners filed a motion seeking review of the special master’s decision. On April 15, 2009, the respondent filed a response in each case. The *Cedillo* case has been assigned to Judge Thomas Wheeler. The *Hazlehurst* case was assigned to Judge John Wiese. The *Snyder* case was assigned to Judge Margaret Sweeney.

***B. Post-hearing proceedings concerning the petitioners’ second theory of general causation***

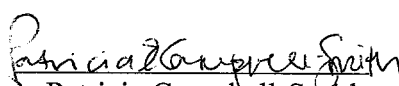
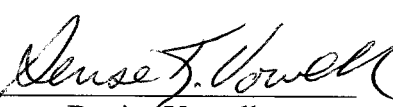
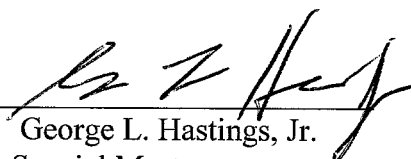
The PSC’s *second* causation theory is that *thimerosal-containing vaccines alone* can cause autism. As to that theory, we conducted an evidentiary hearing on May 12 through May 30, 2008. At that evidentiary hearing, the PSC and respondent presented testimony concerning both that “general causation issue” and *also* the “specific causation” issue in two of the particular “test cases” for that theory selected by the PSC, which are the cases of *King v. Secretary of HHS*, No. 03-584V, and *Mead v. Secretary of HHS*, No. 03-215V. Then, specific causation evidence was presented concerning the third test case, *Dwyer v. Secretary of HHS*, No. 03-1202V on July 21-22, 2008. (Special Master Hastings will decide the specific causation issue in the *King* case, Special Master Campbell-Smith will decide the specific causation issue in the *Mead* case, and Special Master Vowell will decide the specific causation issue in the *Dwyer* case.)

The parties are now engaged in the process of preparing written briefs analyzing the evidence in each of the three cases. The petitioners filed their opening briefs in *Mead* and *Dwyer* on April 3, 2009, and in *King* on April 5, 2009. The respondent's briefs in each case are due to be filed in early June. The petitioners in each case will then have the opportunity to file a reply brief 30 days thereafter.

Once the last of those briefs is filed, in each of the three cases the assigned special master will analyze the briefs, study the evidentiary record, and issue a ruling as soon as possible.

***C. 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 May 7, 2009.

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