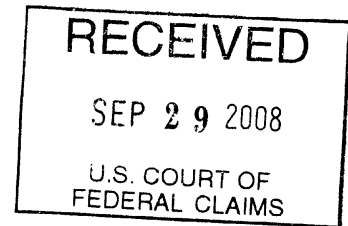


In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

(Filed: September 29, 2008)



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 FILE¹

AUTISM UPDATE--SEPTEMBER 29, 2008

This Update describes a number of recent developments in the Omnibus Autism Proceeding (“OAP”) that have occurred since the last Autism Update, issued on July 8, 2008. Since that last Update, Special Master Vowell conducted an additional evidentiary hearing in a “test case” on July 21-22, 2008 (as discussed below), and we also held unrecorded telephonic status conferences in the OAP on July 9, August 25, and September 16, 2008.

¹The 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. Post-hearing proceedings in the “test cases” concerning petitioners’ first theory of general causation

As explained in previous Autism Updates, the Petitioners’ Steering Committee (PSC) stated its desire to present *three different theories* of “general causation” in the Omnibus Autism Proceeding, and the undersigned special masters instructed the PSC to designate three “test cases” for *each* of the three 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 in 2007, the parties engaged in a lengthy process of filing written briefs analyzing the evidence in each of the three cases. The parties have now completed that process in all three cases.

Accordingly, the evidentiary records are now *closed* in each of the three “Theory 1” test cases. In each of these three cases, the presiding special master has already spent many hours analyzing the evidence and briefs presented by the parties, and will issue a detailed written ruling as soon as possible.

B. Evidentiary hearings concerning the petitioners’ second theory of general causation

As noted above, the PSC proposed to present *three different* theories of “general causation.” The PSC’s *second* stated 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. 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. PSC's third theory of general causation

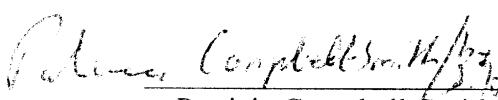
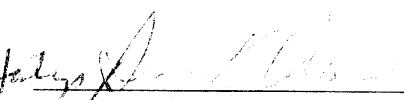
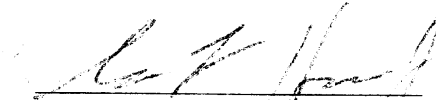
The PSC's third original stated theory, as noted above, was that the *MMR vaccine alone* can cause autism. However, in recent months both the PSC and respondent have filed documents, into the Autism Master File (on April 29 and August 7), indicating the view that there is no need for a third round of "test cases" similar to those described above concerning the PSC's Theory 1 and Theory 2.

We agree. It appears to us that the PSC at this time does not have a third theory that is distinct in any significant way from Theory 1 or Theory 2. It appears that the PSC's "MMR vaccine alone" theory has already been presented, in effect, as part of Theory 1. Therefore, at this time we have not scheduled any further "test case" proceedings in the OAP. Instead, each of us is concentrating on resolving the Theory 1 and 2 test cases.

If, at a future time, the PSC, or any autism petitioners' counsel, proposes a causation theory that is significantly distinct from Theory 1 or Theory 2, we will, at that time, consider the best way to evaluate such theory.

D. Future proceedings

We will continue to meet regularly with the representatives of both the PSC and respondent, to plan the additional stages of 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 7, 2008.

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