# In the United States Chart of Federal Claims ED

OFFICE OF SPECIAL MASTERS

SEP 2 9 2003

U.S. COURT OF FEDERAL CLAIMS

(Filed: September 29, 2003)

#### ORDER PLACING DOCUMENT INTO MASTER FILE

The attached document filed by the Secretary of Health and Human Services in an individual autism case is relevant to the pending issue of when this court should issue "judgments" in Vaccine Act cases.

George L. Hastings/Ir.

Special Master

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

CLAIMS

OFFICE OF THE CLERK
U.S. COURT OF FEGERAL CLAIMS

AMY CURRIE and DOUG HAMILTON, as parents and natural guardians of EDGAR HAMILTON,

Petitioners,

v.

No. 02-838V Special Master Hastings

SECRETARY OF HEALTH AND HUMAN SERVICES,

Respondent.

### RESPONSE TO JUNE 16, 2003 ORDER

Pursuant to the Court's June 16, 2003 order, respondent hereby submits the following response. The Court has requested that respondent provide his view whether, "after a dismissal pursuant to Vaccine Rule 21(a), with no judgment being entered," there is "any legal impediment to an award of attorneys' fees (assuming, of course, that the special master concludes that the petition was originally filed in good faith and with a reasonable basis in fact)[.]"

Initially, respondent respectfully notes that the issue that the Special Master has asked him to address is moot with regard to the case at bar. During an April 30, 2003 status conference with respondent's counsel and the Special Master, petitioners' counsel indicated that he does not plan to file an application for fees and costs. Additionally, both parties are prepared to

stipulate to the fact that petitioners are not seeking attorney's fees and costs. Because petitioners do not plan on filing such an application and, in fact, have stipulated that they are not seeking fees and costs, the question posed in the Special Master's June 16, 2003 order is not ripe.

Nevertheless, to the extent that the question posed might arise in other cases, respondent deems that, in the appropriate circumstances, attorney's fees and costs may be awarded after a dismissal pursuant to Vaccine Rule 21(a), even though no judgment pursuant to 42 U.S.C. § 300aa-12(d) and (e) shall have issued. Respondent notes that attorney's fees and costs would not be appropriate in the case of a petition filed without sufficient evidence to determine whether jurisdiction under the Vaccine Act was properly invoked and whether the claim was brought in good faith and with a reasonable basis, regardless of the manner of dismissal.

Respectfully submitted,

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Date: July 16, 2003

### CERTIFICATE OF SERVICE

I certify that on this \_\_\_\_\_\_ day of July, 2003, a copy of respondent's RESPONSE TO JUNE 16, 2003 ORDER was served, by first class mail, postage prepaid, upon:

John N. Hamilton 525 N. Harbor City Blvd. P.O. Drawer 361817 Melbourne, FL 32936

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