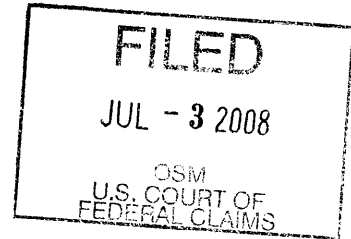


ORIGINAL

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

(Filed: July 3, 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

ORDER CONCERNING THEORY 2 GENERAL CAUSATION REBUTTAL

As explained in our Order filed into the Autism Master File on June 17, 2008, there has been some controversy concerning the extent to which the petitioners would be permitted to offer any further rebuttal evidence concerning the "Theory 2" general causation issue. As described in that June 17 Order, the dispute that arose during the June 12 status conference concerned whether the petitioners should be permitted, at the end of the evidentiary hearing concerning the third Theory 2 test case to be held during the week of July 21, 2008, to offer testimony of Dr. Aposhian in rebuttal to matters contained in the *written expert reports* of Drs. Magos and Clarkson, even though the respondent had elected not to present any oral testimony of Drs. Magos and Clarkson. In that

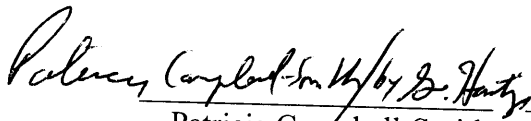
¹The Autism Master File constitutes the record of the Omnibus Autism Proceeding. The complete File is maintained by the Clerk of this court, and is available for inspection by the parties. An electronic version of the File is maintained on this court's website. This electronic version contains a complete 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 home page, click on the "Vaccine Info" page, then on the "Autism Proceeding" page.

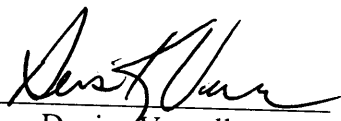
June 17 Order, we ruled, over respondent's objection, that petitioners would be permitted to offer such testimony by Dr. Aposhian.

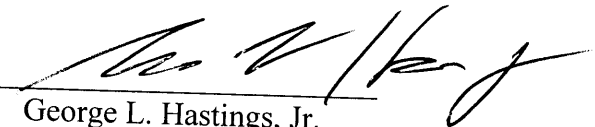
During the next status conference, however, on June 27, 2008, respondent announced that respondent wishes to, in effect, withdraw the written reports of Drs. Magos and Clarkson; respondent withdraws any reliance, in the three Theory 2 "test cases," on those expert reports. In response, we special masters then noted that respondent would be permitted to withdraw any reliance on those two expert reports, and that we would *not* consider those reports at all in resolving those test cases. Mr. Powers then suggested that petitioners might nevertheless seek to recall Dr. Aposhian anyway, to possibly provide rebuttal to evidence (not related to Drs. Magos and Clarkson) offered by respondent during the May 2008 Theory 2 general causation hearing. We replied that such rebuttal would be inconsistent with our June 17 Order, which specified that petitioners would be permitted rebuttal only to "the matters presented in the reports of Drs. Magos and Clarkson." (The petitioners already had their opportunity, during the May hearing, to present any rebuttal testimony to respondent's witnesses *other* than Drs. Magos and Clarkson. As we clearly ruled during the May hearing, the July extension of the general causation hearing was *expressly to be limited* to the testimony of Drs. Magos and Clarkson, and any rebuttal by petitioners to that testimony. See discussion at pp. 2150-51 of the transcript of the May hearing.)

Mr. Powers then stated that the petitioners might wish to file a motion requesting that certain unspecified inferences be drawn from the respondent's decision to withdraw the reports of Drs. Magos and Clarkson. As we noted during the conference, we will certainly consider any such motion.

Accordingly, we note that, with the withdrawal of the expert reports of Drs. Magos and Clarkson eliminating the need for any rebuttal of those reports, we now consider the Theory 2 *general causation* evidence to be closed. The hearing to commence on July 21, 2008, thus, will concern only the "specific causation" issue in the third test case, the *Dwyer* case.


Patricia Campbell-Smith
Special Master


Denise Vowell
Special Master


George L. Hastings, Jr.
Special Master