

**In the United States Court of Federal Claims**

**OFFICE OF SPECIAL MASTERS**

(E-Filed: August 15, 2012)

No. 03-0775V

\* \* \* \* \*

ANGEL GUILLOT and DALE \*  
GUILLOT, parents of JACOB \*  
GUILLOT, a minor child, \*

Petitioners, \*

v. \*

SECRETARY OF THE \*  
DEPARTMENT OF HEALTH AND \*  
HUMAN SERVICES, \*

Respondent. \*

\* \* \* \* \*

TO BE PUBLISHED

Autism; Motion for Relief from  
Judgment; Vaccine Rule 36;  
Rule 60(b)(1) and (b)(6)

Michael L. Cave, Cave Law Firm, L.L.C., Baton Rouge, LA, for petitioners.

Linda S. Renzi, U.S. Dep't of Justice, Washington, DC, for respondent.

**ORDER DENYING PETITIONERS' MOTION**  
**FOR RELIEF FROM JUDGMENT**<sup>1</sup>

Pending before the undersigned is petitioners' motion for relief from judgment. Judgment entered in this case on April 11, 2011 (Judgment).

<sup>1</sup> Because this order contains a reasoned explanation for the undersigned's action in this case, the undersigned intends to post this ruling on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire" order will be available to the public. Id.

For the reasons discussed more fully below, the undersigned **DENIES** petitioners' motion. To put the undersigned's ruling into proper context, some background discussion is helpful.

## **I. Background**

Petitioners' case was dismissed on March 8, 2012 for failure to prosecute and insufficient proof (Decision). The dismissal decision issued following petitioners' counsel's failure to comply with a scheduling order and a subsequent show cause order. Decision at 3. The two orders directed petitioners to file certain medical records and a brief addressing the timeliness of their claim. Id. Petitioners were further directed to provide evidence, consistent with their representations, that they first filed a timely claim in district court before bringing their vaccine claim. Id. Petitioners' unresponsiveness to the two orders triggered the issuance of the dismissal.

### **A. Petitioners' Claim and Subsequent Failure to Comply with Court Orders**

On April 14, 2003, petitioners filed a petition for compensation pursuant to the National Vaccine Injury Compensation Program,<sup>2</sup> alleging that their son Jacob was injured as a result of his receiving certain vaccines listed on the Vaccine Injury Table. See § 14. Petitioners' filed an amended petition more than eight years later, on August 29, 2011, asserting that the vaccines administered to Jacob on May 14, 1999 caused him to suffer an encephalopathy. Amend. Pet. at 1. An encephalopathy is a recognized injury on the Vaccine Injury Table if it occurs within three days of the administration of any vaccine containing pertussis bacteria or antigens. See § 14(a)(I)(B). Here, Jacob received a Diphtheria-Tetanus-acellular Pertussis (DTaP) vaccine on May 14, 1999. Pet'rs' Ex. 7. His parents claim that he suffered a vaccine-related encephalopathy that same day. Amend. Pet. at 1.

Because the filed medical records did not appear to reflect the type of symptoms associated with a Table encephalopathy, the undersigned directed petitioners to file an expert report detailing how Jacob's vaccinations caused his injury. Order, September 12, 2011. Petitioners filed their expert report on November 14, 2011.

The following day, on November 15, 2011, the undersigned held a status conference with the parties to discuss two significant problems with the filed expert

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<sup>2</sup> The Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-10 et seq. (hereinafter "Vaccine Act" or "the Act"). Hereafter, individual section references will be to 42 U.S.C. § 300aa of the Act.

report. The first was the lack of any citation to Jacob's medical records. The second was the identified date of onset of Jacob's encephalopathy (May 14, 1999), which rendered the originally filed petition (dated April 14, 2003) untimely.

For an injury occurring after October 1, 1988, the Vaccine Act provides that "if a vaccine-related injury occurred as a result of the administration of such vaccine, no petition may be filed for compensation under the Program for such injury after the **expiration of 36 months** after the date of the occurrence of the first symptom or manifestation of onset or of the significant aggravation of such injury." § 16(a)(2) (emphasis added). Vaccine Rule 19 counsels that in circumstances in which the method of computing time is not specified, one must compute the period of time—when stated in days or a longer unit of time—by excluding the day of the event that triggered the period and counting every day of the prescribed time period. Vaccine Rule 19(a)(1). To have been timely filed under the Vaccine Act, petitioners' claim must have been filed on or before May 15, 2002.

During the November 2011 status conference, petitioners' counsel agreed to address the two issues of concern in future filings. See Order, Nov. 21, 2011. As further discussed during the status conference, petitioners were directed to file before February 1, 2012, the missing medical records from the period of time between October 1998 and 2000 as well as a brief addressing the timeliness of the vaccine claim. Id. at 2.

Petitioners failed to comply with the November 21, 2011 order. On February 6, 2012, the undersigned issued a show cause order, again directing petitioners to file the outstanding medical records and a brief addressing the timeliness of their claim, or otherwise demonstrate, within thirty days, why the case should not be dismissed for failure to prosecute. Order, Feb. 6, 2012. Petitioners did not respond, and the undersigned issued a dismissal decision on March 8, 2012. No motion for review was filed, and judgment entered on April 11, 2012.

## **B. Dismissal of Petition**

Petitioners have been put on notice repeatedly about the importance of developing a record in this case and complying with the issued orders. By orders dated May 27, 2011, July 13, 2011, and September 12, 2011, the undersigned advised petitioners that noncompliance with court orders could lead to the dismissal of their claim. See Order, May 27, 2011; Order, July 13, 2011; Order, Sept. 12, 2011. These orders preceded the issuance of the show cause order on February 6, 2012. Petitioners' unresponsiveness to the show cause order (and an earlier issued order) triggered the dismissal of their claim on March 8, 2012, for failure to prosecute. Decision at 3-4.

To establish entitlement to Program compensation for Jacob, petitioners must have proven either that: (1) Jacob suffered a listed injury on the Table corresponding to one of

his received vaccines within the prescribed timeframe; or (2) Jacob suffered an injury that was caused in fact by his received vaccines. See §§ 13(a)(1)(A) and 11(c)(1). Because the Vaccine Act prohibits a special master from finding for a petitioner based upon “the claims of a petitioner alone, unsubstantiated by medical records or by medical opinion,” § 13(a), petitioners needed to have filed the critical medical records on which they and their expert relied. But petitioners did not.

By failing to file the requested medical records, petitioners provided no support for the claims made in their expert report that Jacob had suffered an encephalopathy—either as defined by the Vaccine Injury Table or as necessary to establish causation in fact. Decision at 3. Approximately one month after the dismissal of petitioners’ claim, judgment entered.

### **C. Petitioner’s Motion for Relief from Judgment**

On April 24, 2012, thirteen days after entry of the judgment dismissing their claim, petitioners moved for relief (Motion for Relief from Judgment). Petitioners alleged that they had received no orders or electronic notices of any docket entries after the filing of their expert report on November 14, 2011.<sup>3</sup> Motion for Relief from Judgment ¶ 4, Affidavit ¶ 4. Petitioners do not dispute that they participated in a status conference the day after their last filing in November to discuss the problems identified with their expert report. See Order, Nov. 21, 2011.

In their motion for relief from judgment, petitioners acknowledge expecting the issuance of an order after the status conference “outlining the issues” petitioners were to address. Motion for Relief from Judgment ¶ 3, Affidavit ¶ 1. Yet, petitioners’ counsel contends, he never received notice of the issued order. Motion for Relief from Judgment ¶ 6, Affidavit ¶ 4. Nor was he “aware of what was occurring in this matter.” Motion for Relief from Judgment ¶ 7, Affidavit ¶ 5.

Counsel does not explain why he did not contact the court to inquire about the expected order during the ensuing weeks. Instead, he asserts that he and his secretary have checked their computers since the entry of judgment, and neither has received notice of the November 21, 2011 Order, the February 6, 2012 show cause order, the March 8, 2012 dismissal decision, or the April 11, 2012 judgment. Motion for Relief from Judgment ¶ 6, 8, Affidavit ¶ 4, 6.

Counsel argues that relief is appropriate under Rule 60(b)(1) because his failure to receive the four filings between November 2011 and April 2012 constituted a “mistake”

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<sup>3</sup> This case was converted from a paper format to an electronic one in August 2011, approximately three months before petitioners electronically filed their expert report. See Order, Aug. 24, 2011; Notice, Aug. 24, 2011.

or “surprise,” and his failure to comply with these orders constituted “excusable neglect.” Motion for Relief from Judgment ¶8, Affidavit ¶6. Counsel further argues that even if his firm’s “office computers were to blame” a circumstance that he wholly denies, such computer malfunction “would constitute ‘any other reason that justifies relief’ under Rule 60(b)(6).” Motion for Relief from Judgment ¶ 9; Affidavit ¶ 7.

## II. Analysis

### A. Applicable Legal Standards

Under the Vaccine Rules, a party may seek relief from a judgment or order pursuant to Rule 60 of the Rules of the United States Court of Federal Claims (RCFC). Vaccine Rule 36(a). The motion for such relief is referred to the special master, to whom the vaccine claim had been assigned previously, if she is still available, for a written ruling. Vaccine Rule 36(a)-(b). Because there is little caselaw interpreting RCFC 60, and because RCFC 60 is identical to Rule 60 of the Federal Rule of Civil Procedure (FRCP), the undersigned considers instructive decisions interpreting FRCP 60 in the analysis that follows.

RCFC 60(b) provides:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under RCFC 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.<sup>4</sup>

Before granting relief pursuant to a Rule 60(b) motion, the reviewing decision maker may consider first whether the underlying claim is a legally tenable one. See Curtis v. United States, 61 Fed. Cl. 511, 512-13 (2004). In Curtis, the judge required evidence that the claim was meritorious prior to the grant of Rule 60(b) relief to avoid the

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<sup>4</sup> Rules of the United States Court of Federal Claims (RCFC) 60(b) (updated July 2, 2012).

“empty exercise” of vacating the judgment.<sup>5</sup> Id. (quoting Teamsters, Local No. 59 v. Superline Transp. Co., 953 F.2d 17, 20 (1st Cir.1992)). Petitioners here seek relief on the grounds set forth in Rule 60(b)(1) and (b)(6). The standards for each are examined in turn.

**i. RCFC 60(b)(1)**

Under Rule 60(b), relief may be granted for “mistake, inadvertence, surprise, or excusable neglect.” RCFC 60(b)(1). Excusable neglect is not defined in the court’s rules. But the Supreme Court has held that an assessment of excusable neglect must “tak[e] account of all relevant circumstances surrounding the party’s omission.” Pioneer Inv. Servs. Co. v. Brunswick Ltd. P’ship, 507 U.S. 380, 395. In the Pioneer decision,<sup>6</sup> the Supreme Court set forth four relevant factors for consideration: (1) the “danger of prejudice to the [nonmoving] party, [(2)] the length of the delay and its potential impact on judicial proceedings, [(3)] the reason for the delay, including whether it was within the reasonable control of the movant, and [(4)] whether the movant acted in good faith.” Id. at 395. Although these factors are identified as components of the excusable neglect inquiry, courts have traditionally given greater weight to the third factor of the movant’s reasonable control over the circumstances causing the delay or omission. Silivanch v. Celebrity Cruises, Inc., 333 F.3d 355, 366 (2nd Cir. 2003) (citing Graphic Communications Int’l Union, Local 12–N v. Quebecor Printing Providence, Inc., 270 F.3d 1, 5–6 (1st Cir.2001)).

**ii. RCFC 60(b)(6)**

Rule 60(b) allows the court to vacate a judgment for “any other reason that justifies relief.” RCFC 60(b)(6). To obtain relief from judgment under Rule 60(b)(6), however, a showing of “extraordinary circumstances” is required. Kennedy v. Sec’y of Health & Human Servs., 99 Fed. Cl. 535, 548 (2011) (citing Ackermann v. United States, 340 U.S. 193, 202 (1950)). Rule 60(b)(6) permits the decision maker to grant relief from judgment to a party in circumstances in which a “grave miscarriage of justice” would otherwise result. Id. at 540 (quoting United States v. Beggerly, 524 U.S. 38, 47 (1998)). Moreover, Rule 60(b)(6) may be used “to vacate judgments whenever such action is

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<sup>5</sup> The Court of Federal Claims broadly defined a meritorious claim as one that “states a legally tenable cause of action.” Curtis, 61 Fed. Cl. 511 at 513 (quoting Stelco Holding Co. v. United States, 44 Fed. Cl. 703, 709 (1999)).

<sup>6</sup> The Pioneer case was brought under a bankruptcy rule that allows an enlargement of time for “excusable neglect.” Federal Rules of Bankruptcy Procedure 9006(b)(1). In Pioneer, as the undersigned does here, the Supreme Court evaluated caselaw interpreting FRCP (60)(b)(1) as well as other sections of the FRCP that contain an “excusable neglect” standard. Pioneer, 507 U.S. at 390-94.

appropriate to accomplish justice.” Freeman v. Sec’y of Health & Human Servs., 35 Fed. Cl. 280, 284 (1996) (citing Solitron Devices, Inc. v. United States, 16 Cl. Ct. 561, 564 (1989)) (granting a request for relief because the “petitioners appear to have been misled by their attorney” and therefore “lost an opportunity to have their case decided based upon its merits”). But generally, relief will not be granted if “substantial rights of the party have not been harmed by the judgment or order.” Vessels v. Sec’y of Health & Human Servs., 65 Fed. Cl. 563, 568 (2005) (citing Curtis v. United States, 61 Fed. Cl. 511, 512 (2004)).

Importantly, Rules 60(b)(1) and 60(b)(6) are mutually exclusive. Pioneer, 507 U.S. at 393 (citations omitted). A movant seeking relief from judgment premised on inadvertence and neglect cannot obtain relief under Rule 60(b)(6) as well. See Stevens v. Miller, 676 F.3d 62, 67-68 (2d Cir. 2012) (citing Klaprott v. United States, 335 U.S. 601 (1949)).

## **B. Evaluating Petitioners’ Motion for Relief from Judgment**

### **i. Petitioners’ claim is not a legally tenable one**

As an initial matter, the undersigned may consider whether petitioners’ claim can be maintained as a legally tenable claim. See Curtis, 61 Fed. Cl. 511 at 512-13. Here, the undersigned is not persuaded that petitioners have such a claim because their action was not timely filed.

The Vaccine Act provides that:

no petition may be filed for compensation under the Program for [a vaccine-related] injury **after the expiration of 36 months** after the date of the occurrence of the first symptom or manifestation of onset or of the significant aggravation of such injury....”

42 U.S.C. § 300aa-16(a)(2) (emphasis added).

Petitioners asserted during the November 15, 2011 status conference that their vaccine claim was timely because they had filed an earlier civil action, and thus, could avail themselves of the Vaccine Act’s savings provision. § 11(a)(2)(B). The Vaccine Act requires that if a civil action for damages greater than \$1,000 is brought claiming vaccine-related injury or death, it must be dismissed, and “the date such dismissed action was filed shall, for purposes of the limitations of actions prescribed by section 300aa-16 of this title, be considered the date the petition was filed if the petition was filed within one year of the date of the dismissal of the civil action.” § 11(a)(2)(B). Known as the savings provision, section 11(a)(2)(B) of the Act allows the date of filing of the civil action to be considered as the filing date of the vaccine petition for statute of limitations

purposes if: (1) the civil action was filed within the Act's 36-month statute of limitations; (2) the civil action could have been filed as a vaccine claim; and (3) the vaccine claim was filed within one year of dismissal of the earlier filed civil action.

Because petitioners have filed no evidence to date pertaining to their earlier filed civil claim, see Order, November 21, 2011, the undersigned independently sought information about petitioners' civil action in the United States District Court for the Eastern District of Louisiana solely for the purpose of determining whether the savings provision of the Vaccine Act was applicable in this factual circumstance. Motion for Relief from Judgment ¶ 7, Affidavit ¶ 5, Vaccine Rule 11(2)(A)(i)(II)(ii)(B). Publicly available court records indicate that petitioners first filed a civil action in Louisiana state court on August 15, 2002. Guillot, et. al. v. Aventis Pasteur, Inc. et al., No. 94445 (Parish of Lafourche, 17th Judicial District Court, filed Aug. 15, 2002). That action was removed to federal district court nearly three months later, on November 8, 2002, and all claims that could have been brought pursuant to the Vaccine Act were dismissed on March 31, 2003. Guillot, et. al. v. Aventis Pasteur, Inc. et al., No. 02-3373 (E.D. La. Nov. 8, 2002). To have been timely filed, petitioners must have filed their claim within 36 months of the onset of Jacob's alleged vaccine-related encephalopathy, or by no later than May 15, 2002. Because Petitioners did not file their claim in state court until August 15, 2002, three months beyond the Act's limitations period, they cannot avail themselves of the Act's savings provision.

Nor is this a situation where equitable tolling would apply. Although, the Court of Appeals for the Federal Circuit recently recognized the applicability of the doctrine of equitable tolling in vaccine cases, the Circuit Court noted that the doctrine is to be used "sparingly," and not to be invoked simply because the running of the statute of limitations would otherwise deprive a petitioner of the opportunity to bring a claim.<sup>7</sup> Cloer v. Sec'y of Health & Human Servs., 654 F.3d 1322, 1340, 1344-45 (Fed. Cir. 2011) (en banc) (citing Irwin v. Dep't of Veterans Affairs, 498 U.S. 89, 96 (1990)). The Circuit Court instructed that equitable tolling should be applied only when a petitioner has "diligently pursued his rights, but . . . 'extraordinary circumstance[s]'" such as a procedurally defective pleading, fraud, or duress, stood in the way of a timely filing. Cloer, 654 F.3d at 1344-45 (citing Irwin, 498 U.S. at 96 and Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005)). Here, petitioners have not asserted, and the undersigned has found no evidence of, the type of diligence or extraordinary circumstance that would warrant the application of equitable tolling.

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<sup>7</sup> The undersigned notes that opinions of the United States Court of Appeals for the Federal Circuit are binding on the Office of Special Masters. See Snyder v. Sec'y of Health & Human Servs., 88 Fed. Cl. 706, 719 n.23 (2009).



Because petitioners' claim was not timely filed, granting relief from judgment would be a futile effort. Nonetheless, for the sake of completeness, the undersigned addresses petitioners' request for relief pursuant to Rule 60(b)(1) and 60(b)(6).

**ii. Petitioners seek relief from judgment under Rule 60(b)(1) because they failed to receive the court's orders**

Petitioners seek relief from judgment under Rule 60(b)(1) on the ground that counsel did not receive electronic notice of any orders filed after November 14, 2011, through the court's Case Management/Electronic Case Filing (CM/ECF) System, which automatically sends a Notice of Electronic Filing (NEF) to registered attorneys whenever a filing is made by either the parties or the court.<sup>8</sup> Petitioners' counsel is a CM/ECF registered attorney who receives e-mail notifications of all docket entries in this case.<sup>9</sup>

Counsel's claim that he stopped receiving electronic notices in this case after he filed the expert report on November 14, 2011 is a questionable one. Prior to that date, he regularly had received notices concerning docket entries in this case. Counsel also continued to receive notices in his other pending electronic vaccine cases during the same period of time he alleges he received no notices from the undersigned. See Court Ex. 3 (Affidavit of Joseph Taylor). A thorough internal inquiry and review of recent NEF logs

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<sup>8</sup> "CM/ECF is a comprehensive case management system that allows courts to maintain electronic case files and offer electronic filing over the Internet. Whenever a document is filed, the CM/ECF system automatically generates a NEF. The NEF is an e-mail message containing a link to the filed document [sent] to registered attorneys involved with the case. The link allows e-mail recipients to access the electronically filed document once free of charge." Robinson v. Wix Filtration L.L.C., 599 F.3d 403, 406 n.1 (4th Cir. 2010) (citing Jessica Belskis, Electronic Case Filing: Is Failure to Check E-mail Related to an Electronically Filed Case Malpractice?, 2 Shidler J.L. Com. & Tech. 13 (2005). Litigants can save or print one free copy of any document filed electronically in their cases. The link expires after fifteen days, after which time period attorneys may continue to access the document for a per view fee. Id.

<sup>9</sup> As of August 3, 2012, Michael Langdon Cave had four e-mail addresses registered to his account. Court Ex. 1 (E-mail Information for Michael L. Cave). During the time period when counsel claims he was not receiving CM/ECF notifications in this case, the court only had two e-mail addresses for petitioners' counsel—mike@cavelaw.com and brooke@cavelaw.com. Court Ex. 2 (NEF receipts for all of the documents counsel contends he did not receive). Counsel contacted the court on May 9, 2012 regarding his failure to receive e-mails, and added two more e-mail addresses to his CM/ECF account. See Court Ex. 3. (Affidavit of Joseph Taylor).

by the court's information technology group has revealed that both registered attorney e-mail addresses at counsel's firm successfully received electronic notifications. See Court Ex. 4 (Affidavit of Daffeh Hansford). This finding militates against the likelihood that a court error prevented counsel from receiving the relevant notices of electronic findings.

But, even if the court's electronic notification system had failed, petitioners' failure to monitor the case docket is not the type of excusable neglect contemplated by Rule 60(b)(1). As set forth in the Pioneer case, a finding that the cause for a delay or omission in a case was within the reasonable control of petitioners strongly militates against a grant of relief from judgment sought on the ground of excusable neglect. See Silivanch 333 F.3d at 366 (observing that the reasonable control factor, the third of the four Pioneer factors, is often given greater weight in the excusable neglect analysis).

Petitioners have a responsibility to monitor the case docket for new activity through the Public Access to Court Electronic Records (PACER)<sup>10</sup> system. Their failure to do so and the consequent failure to comply with issued orders were omissions that fell within the realm of petitioners' reasonable control. Even if the undersigned were to find that the other Pioneer factors, specifically: (1) the danger of prejudice to the respondent; (2) the impact of any delay on the proceedings; and (4) the good faith of the petitioner militated in petitioners' favor, petitioners' motion for relief must fail on the preponderant weight of the reasonable control factor. Petitioners' counsel has acknowledged that he was expecting a court order. But he failed to monitor the case docket and has not explained why he did not attempt to contact the court when he did not receive the anticipated order. See Motion for Relief from Judgment. While petitioners have shown that they were neglectful, their conduct was not excusable.

Petitioners' counsel participated in the November 15, 2011 status conference and was left with "the impression he would receive an order from the court outlining issues that needed further address." Motion for Relief from Judgment ¶ 3. Aware that an order would be forthcoming, counsel cannot claim now that he was surprised by, or unaware of, the November 21, 2012 scheduling order if he was expecting it. *Id.* ¶ 7, 8. The duty to seek clarity when there is uncertainty regarding a scheduling order rests with the parties.

At least two circuit courts have considered motions for relief from judgment pursuant to FRCP 60(b), an analog to RCFC 60(b), that were prompted by counsel's

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<sup>10</sup> "Public Access to Court Electronic Records (PACER) is an electronic public access service that allows users to obtain case and docket information from federal appellate, district and bankruptcy courts, and the PACER Case Locator via the Internet. PACER is provided by the federal [j]udiciary in keeping with its commitment to providing public access to court information via a centralized service." PACER, <http://www.pacer.gov/> (last visited July 12, 2012).

technical difficulties with CM/ECF. In Robinson v. Wix Filtration L.L.C., an appellant claimed that “e-mail difficulties experienced by his counsel” excused the party’s failure to respond to a motion. 599 F.3d 403, 412-13 (4th Cir. 2010). The Fourth Circuit did not find the described circumstances constituted excusable neglect. Id. at 413. Instead, the circumstances indicated the “carelessness” and “inattentiveness” on the part of the counsel who failed to actively monitor the court’s docket or find some other means by which to stay informed of the docket activity, particularly when he knew that there was an upcoming deadline for motions and corresponding responses. Id. at 413-14. See also Yeschick v. Mineta, 675 F.3d 622, 631 (6th Cir. 2012) (holding that counsel’s failure to monitor the docket when motions are expected furnishes evidence of a lack of diligence rather than excusable neglect).

Nor does it appear that petitioners in this case can insulate themselves from their counsel’s inattention or carelessness. In Fischer v. Anderson, the Federal Circuit considered a trademark applicant’s motion for relief from judgment due to her attorney’s failure to respond to a show cause order. 250 Fed. Appx. 359, 362 (2007) (unpublished).<sup>11</sup> The Federal Circuit found that the attorney’s inaction did not constitute excusable neglect meriting relief for the trademark applicant because the applicant was bound by the conduct of her attorney. Id. (citing Pioneer 507 U.S. at 396-97). Here, petitioners’ counsel’s failure to monitor the docket and corresponding failure to respond to the issued orders does not constitute excusable neglect and thus, does not merit a grant of relief from judgment.

**iv. Petitioners’ claim for relief under Rule 60(b)(6) is unavailing**

Petitioners also assert that judgment could be vacated for “any other reason that justifies relief.” RCFC 60(b)(6). But, petitioners have provided no additional evidence or argument to support a finding of the extraordinary circumstances necessary to grant relief on this ground. See Kennedy, 99 Fed. Cl. at 548. Instead, petitioners simply assert that even if their “office computers were to blame,” their negligence should be excused. But, as addressed earlier, a motion for relief from judgment based on excusable neglect cannot also support a claim for relief based on any other reason justifying relief. Petitioners have not established that their negligence in this case was excusable. Nor have petitioners pointed to any other extraordinary circumstance meriting relief from judgment.

**v. Petitioners have had a full and fair opportunity to present their case**

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<sup>11</sup> Because Fisher is an unpublished decision, it has no precedential value but is referenced here for the guidance that it offers. See United States Court of Appeals for the Federal Circuit Rules of Practice 32.1.

The Vaccine Rules promulgated by the Court of Federal Claims,<sup>12</sup> were designed to resolve claims “in a manner that is both speedy and fair.” Simanksi v. Sec’y of Health & Human Servs., 671 F3d 1368, 1371 (Fed. Cir. 2012). Under the Rules, a special master has broad discretion to take evidence and conduct proceedings, in addition to the authority to dismiss a claim for failure to prosecute. See id.; Vaccine Rules 3(b), 7(a), 8(c), 21(b)(1). But each party must always be afforded a full and fair opportunity to present its case. Vaccine Rule 3(b)(2).

Providing petitioners with a full and fair opportunity for their claim to be heard demands that a sufficient record be created for later review. Cambell ex. rel. Cambell v. Sec’y of Health & Human Servs., 69 Fed.Cl. 775, 778 (2006) (citations omitted). A full and fair opportunity to be heard also contemplates a procedural mechanism of adequate notice and a measure of time for the presentation of the party’s position. See Hovey v. Sec’y of Health & Human Servs., 38 Fed Cl. 397, 401 (1997) (holding that petitioners were given a full and fair opportunity to present their case through the use of permitted extensions and late filings).

The undersigned has given petitioners adequate time to present their claim and allowed a thorough record to be created. After the conclusion of the OAP, petitioners had until June 27, 2011 to inform the court about how they wished to proceed with their claim. Order, May 27, 2011. As requested, the undersigned granted an enlargement of 60 days for petitioners’ response. Order, July 13, 2011. Petitioners filed an amended petition and various medical records on the last possible day allowed. Petitioners have also filed an expert report that offers an opinion of vaccine-related causation but relies on facts that are not supported by the records now in evidence.

The undersigned dismissed this petition on March 8, 2012 after petitioners failed to file the ordered medical records and their brief on timeliness. Petitioners were given adequate notice and time to comply with these requests. Even assuming arguendo that petitioners have not received electronic notice of the issued scheduling orders, petitioners had received earlier notice of their impending filing requirements during the November 21, 2011 status conference.

Petitioners do not dispute their understanding of the matters addressed during the status conference or their awareness that they were expected to address certain outstanding issues. See Motion for Relief from Judgment ¶ 3; Affidavit ¶ 1. The time frame for addressing these issues was also discussed during the status conference. See Order, Nov. 21, 2011 at 2. Petitioners’ failure to act and failure to ask does not diminish

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<sup>12</sup> As authorized under § 12(d)(2) of the Vaccine Act and on the recommendation of the special masters, the Court of Federal Claims has promulgated Vaccine Rules that govern petitions filed under the Act. See Vaccine Rules, RCFC, Appendix B.

the fullness and fairness of their opportunity to present their claim. Moreover, an independent investigation into the circumstances of the earlier filed claim indicates that petitioners' claim was not filed timely.

### **III. Conclusion**

Because petitioners' claim is untimely, relief from judgment is not warranted. Even if petitioners had a legally tenable claim, the circumstances of this case do not warrant relief from judgment. Petitioners had a duty to monitor the court's docket. Their failure to receive notice of court orders and to file sufficient medical records does not constitute excusable neglect within the meaning of Rule 60(b)(1). Nor do the events that led to the dismissal of petitioners' claim constitute the type of extraordinary circumstance that would merit granting relief under Rule 60(b)(6). For these reasons, the undersigned **DENIES** petitioners' motion for relief from judgment.

**IT IS SO ORDERED.**

s/Patricia E. Campbell-Smith  
Patricia E. Campbell-Smith  
Chief Special Master

**Email Information for Michael Langdon Cave****Registered e-mail addresses****Configuration options***Primary e-mail address:*[mike@cavelaw.com](mailto:mike@cavelaw.com)*Secondary e-mail addresses:*[brooke@cavelaw.com](mailto:brooke@cavelaw.com)[broveillo@yahoo.com](mailto:broveillo@yahoo.com)[mcave70@yahoo.com](mailto:mcave70@yahoo.com)[add new e-mail address](#)

Select an e-mail address to configure.

[Return to Person Information Screen](#)[Clear](#)

MIME-Version: 1.0  
From: uscfc\_cmecf@ao.uscourts.gov  
To: uscfc\_cmecf@ao.uscourts.gov  
Bcc  
--Case Participants: Michael Langdon Cave (brooke@cavelaw.com, mike@cavelaw.com), Gregory William Fortsch (vaccine.ecf@usdoj.gov), Linda Sara Renzi (linda.renzi@usdoj.gov, vaccine.ecf@usdoj.gov)  
Chief Special Master Patricia E. Campbell-Smith (camille\_collett@ao.uscourts.gov, patricia\_campbell-smith@ao.uscourts.gov, terriesa\_jones@ao.uscourts.gov, vaccine\_gc1@ao.uscourts.gov, vicki\_lund@ao.uscourts.gov), Special Master George L. Hastings (vaccine\_gc1@ao.uscourts.gov  
--Non Case Participants  
--No Notice Sent

Message-Id: <1168825@ao.uscourts.gov>  
Subject: Activity in Case 1:03-wv-00775-UNJ GUILLOT et al v. The Secretary of Health and Human Services Scheduling Order  
Content-Type: text/html

**This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.**

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## US Court of Federal Claims

### United States Court of Federal Claims

#### Notice of Electronic Filing

The following transaction was entered on 11/21/2011 at 6:38 PM EST and filed on 11/21/2011

**Case Name:** GUILLOT et al v. The Secretary of Health and Human Services

**Case Number:** [1:03-wv-00775-UNJ](#)

**Filer:**

**Document Number:** [23](#)

#### Docket Text:

**SCHEDULING ORDER:Medical records due by 2/1/2012. Petitioners' counsel's brief on timeliness of petitioners' claim due by 2/1/2012. Respondent's Response due by 3/1/2012. Signed by Chief Special Master Patricia E. Campbell-Smith. (cc2) Copy to parties.**

**1:03-wv-00775-UNJ Notice has been electronically mailed to:**

Gregory William Fortsch (Terminated) vaccine.ecf@usdoj.gov

Linda Sara Renzi linda.renzi@usdoj.gov, vaccine.ecf@usdoj.gov

Michael Langdon Cave mike@cavelaw.com, brooke@cavelaw.com

**1:03-wv-00775-UNJ Notice will NOT be delivered to:**

Court Ex. 2

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1131461693 [Date=11/21/2011] [FileNumber=1168823-0] [439fc11f60b09dc087222c4b4ba7747c4afa64c3f9dea0a11921c0e595acce35f53acdcb79dc414678aac5173ea48966a4e589ff28cc007457f0a4db6b016ff7]]



MIME-Version: 1.0  
From: uscfc\_cmecl@a.uscourts.gov  
To: uscfc\_cmecl@a.uscourts.gov  
Bcc  
--Case Participants: linda Sara Renzi (linda.renzi@usdoj.gov, vaccine.ecf@usdoj.gov, Mchae.lanndon Cave (brooke@cavelaw.com, mike@cavelaw.com), Gregory William Fortsch (vaccine.ecf@usdoj.gov), Special Master George L. Hastings (vaccine\_gcl@a.uscourts.gov), Chief Special Master Patricia E. Campbell-Smith (camille\_collett@a.uscourts.gov, mary\_jamison@a.uscourts.gov, patricia\_campbell-smith@a.uscourts.gov, vaccine\_gcl@o.uscourts.gov, vicki\_lund@a.uscourts.gov  
--Non Case Participants  
--No Notice Sent

Message-Id: <1215004@a.uscourts.gov>  
Subject: Activity in Case 1:03-w-00775-UNJ GUILLOT et al v. The Secretary of Health and Human Services Order to Show Cause  
Content-Type: text/html

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## US Court of Federal Claims

### United States Court of Federal Claims

#### Notice of Electronic Filing

The following transaction was entered on 2/6/2012 at 2:21 PM EST and filed on 2/6/2012

**Case Name:** GUILLOT et al v. The Secretary of Health and Human Services

**Case Number:** [1:03-vv-00775-UNJ](#)

**Filer:**

**Document Number:** [24](#)

#### Docket Text:

**ORDER TO SHOW CAUSE. Show Cause Response due by 3/6/2012. Petitioners' counsel shall file outstanding medical records and a brief addressing the timeliness of this case as directed by the undersigned's order dated November 21, 2011. The filing deadline for respondent's response is SUSPENDED pending further filing from petitioners' counsel. Signed by Chief Special Master Patricia E. Campbell-Smith. (cc2) Copy to parties.**

**1:03-vv-00775-UNJ Notice has been electronically mailed to:**

Gregory William Fortsch (Terminated) vaccine.ecf@usdoj.gov

Linda Sara Renzi linda.renzi@usdoj.gov, vaccine.ecf@usdoj.gov

Court Ex. 2

Michael Langdon Cave    mike@cavelaw.com, brooke@cavelaw.com

**1:03-vv-00775-UNJ Notice will NOT be delivered to:**

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1131461693 [Date=2/6/2012] [FileNumber=1215002-0]

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284a1d9b2bea64be11bb93d530bb08ee70e0434988ec61af10b69aabfb01]]

MIME-Version: 1.0  
From: uscfc\_cmecl@a0.uscourts.gov  
To: uscfc\_cmecl@a0.uscourts.gov  
Bcc  
--Case Participants: linda Sara Renzi (linda.renzi@usdoj.gov, vaccine.ecf@usdoj.gov, Michael Langdon Cave (brooke@cavelaw.com, mike@cavelaw.com), Gregory William Fortsch (vaccine.ecf@usdoj.gov), Special Master George L. Hastings (vaccine\_gcl@a0.uscourts.gov), Chief Special Master Patricia E. Campbell-Smith (camille\_collett@a0.uscourts.gov, mary\_jamison@a0.uscourts.gov, patricia\_campbell-smith@a0.uscourts.gov, vaccine\_gcl@a0.uscourts.gov, vicki\_lund@a0.uscourts.gov  
--Non Case Participants  
--No Notice Sent

Message-Id: <1235654@a0.uscourts.gov>  
Subject: Activity in Case 1:03-w-00775-UNJ GUILLOT et al v. The Secretary of Health and Human Services DECISION of Special Master  
Content-Type: text/html

**This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.**

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## US Court of Federal Claims

### United States Court of Federal Claims

#### Notice of Electronic Filing

The following transaction was entered on 3/8/2012 at 2:43 PM EST and filed on 3/8/2012

**Case Name:** GUILLOT et al v. The Secretary of Health and Human Services

**Case Number:** [1:03-vv-00775-UNJ](#)

**Filer:**

**Document Number:** [25](#)

#### Docket Text:

**DECISION dismissing petitioners' claim for failure to prosecute. Signed by Chief Special Master Patricia E. Campbell-Smith. (cc2) Copy to parties.**

#### **1:03-vv-00775-UNJ Notice has been electronically mailed to:**

Gregory William Fortsch (Terminated) vaccine.ecf@usdoj.gov

Linda Sara Renzi linda.renzi@usdoj.gov, vaccine.ecf@usdoj.gov

Michael Langdon Cave mike@cavelaw.com, brooke@cavelaw.com

#### **1:03-vv-00775-UNJ Notice will NOT be delivered to:**

Court Ex. 2

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1131461693 [Date=3/8/2012] [FileNumber=1235652-0]

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MIME-Version: 1.0  
From: uscfc\_cmecl@a0.uscourts.gov  
To: uscfc\_cmecl@a0.uscourts.gov  
Bcc  
--Case Participants: linda Sara Renzi (linda.renzi@usdoj.gov, vaccine.ecf@usdoj.gov, Michael Langdon Cave (brooke@cavelaw.com, mike@cavelaw.com), Gregory William Fortsch (vaccine.ecf@usdoj.gov), Special Master George L. Hastings (vaccine\_gcl@a0.uscourts.gov), Chief Special Master Patricia E. Campbell-Smith (camille\_collett@a0.uscourts.gov, mary\_jamison@a0.uscourts.gov, patricia\_campbell-smith@a0.uscourts.gov, vaccine\_gcl@a0.uscourts.gov, vicki\_lund@a0.uscourts.gov  
--Non Case Participants  
--No Notice Sent

Message-Id: <1254728@a0.uscourts.gov>  
Subject: Activity in Case 1: 03-w-00775-UNJ GUILLOT et al v. The Secretary of Health and Human Services  
Content-Type: text/html

**This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.**

**\*\*\*NOTE TO PUBLIC ACCESS USERS\*\*\*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

## US Court of Federal Claims

### United States Court of Federal Claims

#### Notice of Electronic Filing

The following transaction was entered on 4/11/2012 at 1:18 PM EDT and filed on 4/11/2012

**Case Name:** GUILLOT et al v. The Secretary of Health and Human Services

**Case Number:** [1:03-vv-00775-UNJ](#)

**Filer:**

**Document Number:** [26](#)

#### Docket Text:

**JUDGMENT entered, pursuant to Vaccine Rule 11(a), dismissing this case for insufficient proof and for failure to prosecute. (Copy to parties) (dls)**

#### 1:03-vv-00775-UNJ Notice has been electronically mailed to:

Gregory William Fortsch (Terminated) vaccine.ecf@usdoj.gov

Linda Sara Renzi linda.renzi@usdoj.gov, vaccine.ecf@usdoj.gov

Michael Langdon Cave mike@cavelaw.com, brooke@cavelaw.com

#### 1:03-vv-00775-UNJ Notice will NOT be delivered to:

Court Ex. 2

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1131461693 [Date=4/11/2012] [FileNumber=1254726-0  
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**In the United States Court of Federal Claims**  
**OFFICE OF SPECIAL MASTERS**

* * * * *	*	
ANGEL GUILLOT and DALE	*	
GUILLOT, parents of JACOB	*	
GUILLOT, a minor child,	*	No. 03-0775V
	*	
Petitioners,	*	Chief Special Master
	*	Patricia Campbell-Smith
v.	*	
	*	
SECRETARY OF THE	*	
DEPARTMENT OF HEALTH AND	*	
HUMAN SERVICES,	*	
	*	
Respondent.	*	
* * * * *	*	


**AFFIDAVIT OF JOSEPH TAYLOR**

1. My name is Joseph Taylor.
2. I have more than 14 years of experience as an employee of the federal court system, and since 2009 I have served as the Case Management/Electronic Case Filing (CM/ECF) coordinator at the Court of Federal Claims.
3. As the CM/ECF coordinator I am responsible for assisting CM/ECF registered attorneys with pending cases in the Court of Federal Claims.
4. In May of 2012, I spoke with Michael Langdon Cave regarding his CM/ECF account. He informed me that he had not been receiving notification of docket entries in Guillot v. Sec’y of Health & Human Servs., Case No. 03-0755V. In the CM/ECF system, Michael Langdon Cave is currently listed as the “lead attorney” for petitioners in the Guillot case, as well as an “attorney to be noticed.”
5. While speaking with Mr. Cave, I added a new email address to his CM/ECF account—mcave70@yahoo.com. I then tested his account by regenerating the electronic notification that was sent with the March 8, 2012 dismissal decision. See Attachment A (re-generated notice of electronic filing created on May 9,

2012). Mr. Cave confirmed that he received both of the test notifications that were sent to him, presumably at the primary email address for his account—mike@cavelaw.com—and at the new email address that I had just added. From this electronic notification, Mr. Cave confirmed that he was able to retrieve the March 8, 2012 dismissal decision.

6. At Mr. Cave's request, I then added another new email address to his account—broveillo@yahoo.com.
7. Mr. Cave informed me that he had several cases with the Court of Federal Claims, all of which use the same CM/ECF system. He indicated that although he had problems receiving notifications of docket entries in the Guillot case and another case he had in front of Chief Special Master Campbell-Smith, he had no such problems in his other cases. See Attachment B (CM/ECF docket report showing Mr. Cave made 19 electronic filings in the Court of Federal Claims between November 21, 2011 and April 11, 2012).

August 7, 2012









Joseph Taylor  
CM/ECF Coordinator  
Court of Federal Claims








## Docket Activity Report

US Court of Federal Claims -- United States Court of Federal Claims

Report Entered Period: 11/21/2011 - 4/11/2012

Case Number/Title	Dates	Category/ Event	Docketed by	Notes
<u>1:02-vv-00235-UNJ</u> <u>MILLER, et al v. HHS</u>	<i>Entered:</i> 11/23/2011 12:22:21 <i>Filed:</i> 11/23/2011	<i>Category:</i> motion <i>Event:</i> Extension of Time <i>Document:</i> <u>33</u> 	M. Cave <i>Type:</i> aty	<i>Cause:</i> 42:300 Vaccine Injury Act <i>NOS:</i> Injury - DTP/DPT <i>Office:</i> COFC <i>Presider:</i> Unassigned <i>Referral:</i> Denise Kathryn Vowell <i>Case Flags:</i>  ECF
	<i>Entered:</i> 12/01/2011 17:42:45 <i>Filed:</i> 12/01/2011	<i>Category:</i> vmisc <i>Event:</i> Expert Report <i>Document:</i> <u>34</u> 	M. Cave <i>Type:</i> aty	
	<i>Entered:</i> 01/23/2012 16:00:54 <i>Filed:</i> 01/23/2012	<i>Category:</i> vmisc <i>Event:</i> Expert Report <i>Document:</i> <u>37</u> 	M. Cave <i>Type:</i> aty	
	<i>Entered:</i> 01/26/2012 11:41:53 <i>Filed:</i> 01/26/2012	<i>Category:</i> vmisc <i>Event:</i> Notice of Intent to File on Compact Disc <i>Document:</i> <u>38</u> 	M. Cave <i>Type:</i> aty	
	<i>Entered:</i> 02/13/2012 11:58:42 <i>Filed:</i> 02/13/2012	<i>Category:</i> trial <i>Event:</i> Exhibit List <i>Document:</i> <u>40</u> 	M. Cave <i>Type:</i> aty	
	<i>Entered:</i> 02/13/2012 15:07:52 <i>Filed:</i>	<i>Category:</i> misc <i>Event:</i> Status Report <i>Document:</i> <u>41</u> 	M. Cave <i>Type:</i> aty	

	02/13/2012			
	<i>Entered:</i> 03/26/2012 17:51:05 <i>Filed:</i> 03/26/2012	<i>Category:</i> misc <i>Event:</i> Status Report <i>Document:</i> <a href="#">43</a>	M. Cave <i>Type:</i> aty	
<u>1:02-vv-02054-UNJ</u> <u>BOYCE, et al v. HHS</u> <b>CASE CLOSED on 10/21/2011</b>	<i>Entered:</i> 12/01/2011 18:23:11 <i>Filed:</i> 12/01/2011	<i>Category:</i> vmisc <i>Event:</i> Petitioners Election to File Civil Action <i>Document:</i> <a href="#">23</a>	M. Cave <i>Type:</i> aty	<i>Cause:</i> 42:300 Vaccine Injury Act <i>NOS:</i> Injury - Other <i>Office:</i> COFC <i>Presider:</i> Unassigned <i>Referral:</i> Patricia E. Campbell-Smit  <i>Case Flags:</i>  CLOSED ECF
<u>1:02-vv-02057-UNJ</u> <u>MADDOCK, et al v. HHS</u> <b>CASE CLOSED on 10/21/2011</b>	<i>Entered:</i> 12/01/2011 18:10:06 <i>Filed:</i> 12/01/2011	<i>Category:</i> vmisc <i>Event:</i> Petitioners Election to File Civil Action <i>Document:</i> <a href="#">24</a>	M. Cave <i>Type:</i> aty	<i>Cause:</i> 42:300 Vaccine Injury Act <i>NOS:</i> Injury - Other <i>Office:</i> COFC <i>Presider:</i> Unassigned <i>Referral:</i> Denise Kathryn Vowell <i>Case Flags:</i>  CLOSED ECF
<u>1:02-vv-02061-UNJ</u> <u>COCKRELL, et al v. HHS</u> <b>CASE CLOSED on 10/21/2011</b>	<i>Entered:</i> 12/01/2011 18:27:18 <i>Filed:</i> 12/01/2011	<i>Category:</i> vmisc <i>Event:</i> Petitioners Election to File Civil Action <i>Document:</i> <a href="#">31</a>	M. Cave <i>Type:</i> aty	<i>Cause:</i> 42:300 Vaccine Injury Act <i>NOS:</i> Injury - Other <i>Office:</i> COFC <i>Presider:</i> Unassigned <i>Referral:</i> Patricia E. Campbell-Smit  <i>Case Flags:</i>  CLOSED

				ECF
<u>1:02-vv-02062-UNJ</u> <u>BRYANT, et al v. HHS</u> CASE CLOSED on 02/09/2012	<i>Entered:</i> 01/06/2012 15:41:48 <i>Filed:</i> 01/06/2012	<i>Category:</i> motion <i>Event:</i> Decision <i>Document:</i> <u>27</u> 	M. Cave <i>Type:</i> aty	<i>Cause:</i> 42:300 Vaccine Injury Act <i>NOS:</i> Injury - Other <i>Office:</i> COFC <i>Presider:</i> Unassigned <i>Referral:</i> George L. Hastings <i>Case Flags:</i>  CLOSED ECF
<u>1:03-vv-00031-UNJ</u> <u>BLAKE, et al v. HHS</u>	<i>Entered:</i> 11/30/2011 12:46:26 <i>Filed:</i> 11/30/2011	<i>Category:</i> vmisc <i>Event:</i> Expert Report <i>Document:</i> <u>24</u> 	M. Cave <i>Type:</i> aty	<i>Cause:</i> 42:300 Vaccine Injury Act <i>NOS:</i> Injury - Other <i>Office:</i> COFC <i>Presider:</i> Unassigned <i>Referral:</i> Patricia E. Campbell-Smit  <i>Case Flags:</i>  ECF
	<i>Entered:</i> 01/16/2012 16:11:31 <i>Filed:</i> 01/16/2012	<i>Category:</i> vmisc <i>Event:</i> Expert Report <i>Document:</i> <u>26</u> 	M. Cave <i>Type:</i> aty	
	<i>Entered:</i> 03/16/2012 16:38:53 <i>Filed:</i> 03/16/2012	<i>Category:</i> misc <i>Event:</i> Status Report <i>Document:</i> <u>28</u> 	M. Cave <i>Type:</i> aty	
<u>1:04-vv-01269-UNJ</u> <u>HARRIS et al v. SECRETARY OF HEALTH AND HUMAN SERVICES</u> CASE CLOSED on 10/21/2011	<i>Entered:</i> 12/01/2011 18:18:08 <i>Filed:</i> 12/01/2011	<i>Category:</i> vmisc <i>Event:</i> Petitioners Election to File Civil Action <i>Document:</i> <u>18</u> 	M. Cave <i>Type:</i> aty	<i>Cause:</i> 42:300 Vaccine Injury Act <i>NOS:</i> Injury - Thimerosal <i>Office:</i> COFC <i>Presider:</i> Unassigned <i>Referral:</i> George

				L. Hastings Jury demand: None Case Flags:  CLOSED ECF
<u>1:05-vv-00266-UNJ</u> <u>MOONEY et al v.</u> <u>SECRETARY OF HEALTH</u> <u>AND HUMAN SERVICES</u>	<i>Entered:</i> 12/01/2011 16:57:55 <i>Filed:</i> 12/01/2011	<i>Category:</i> vmisc <i>Event:</i> Notice of Intent to File on Compact Disc <i>Document:</i> <u>27</u> ●	M. Cave <i>Type:</i> aty	<i>Cause:</i> 42:300 Vaccine Injury Act <i>NOS:</i> Injury - Thimerosal <i>Office:</i> COFC <i>Presider:</i> Unassigned <i>Referral:</i> Denise Kathryn Vowell <i>Jury demand:</i> None <i>Case Flags:</i>  ECF
	<i>Entered:</i> 12/01/2011 17:36:24 <i>Filed:</i> 12/01/2011	<i>Category:</i> misc <i>Event:</i> Status Report <i>Document:</i> <u>28</u> ●	M. Cave <i>Type:</i> aty	
<u>1:08-vv-00108-UNJ</u> <u>HARDY et al v. SECRETARY</u> <u>OF HEALTH AND HUMAN</u> <u>SERVICES</u>	<i>Entered:</i> 11/30/2011 12:43:41 <i>Filed:</i> 11/30/2011	<i>Category:</i> vmisc <i>Event:</i> Expert Report <i>Document:</i> <u>31</u> ●	M. Cave <i>Type:</i> aty	<i>Cause:</i> 42:300 Vaccine Injury Act <i>NOS:</i> Injury - Other <i>Office:</i> COFC <i>Presider:</i> Unassigned <i>Referral:</i> Patricia E. Campbell-Smit  <i>Jury demand:</i> None <i>Case Flags:</i>  ECF
	<i>Entered:</i> 01/16/2012	<i>Category:</i> vmisc <i>Event:</i> Expert Report	M. Cave <i>Type:</i> aty	

	16:16:29 Filed: 01/16/2012	Document: <u>33</u>	
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**Selection Criteria for Report**


<b>Case number</b>	All
<b>Filed Date</b>	All
<b>Entered Date</b>	11/21/2011 - 4/11/2012
<b>Office</b>	COFC
<b>Nature of Suit</b>	All
<b>Cause</b>	All
<b>Case type</b>	All
<b>Judge</b>	Abell, Richard Allegra, Francis M. Baskir, Lawrence M. Block, Lawrence J. Braden, Susan G. Bruggink, Eric G. Bush, Lynn J. Campbell-Smith, Patricia E. Damich, Edward J. Edwards, John F. Firestone, Nancy B. Futey, Bohdan A. Golkiewicz, Gary J. Hastings, George L. Hewitt, Emily C. Hodges, Robert H. Horn, Marian Blank Lettow, Charles F. Lord, Sandra Dee Margolis, Lawrence S. Merow, James F. Miller, Christine O.C. Miller, George W. Millman, Laura D Moran, Christian J. Smith, Loren A. Sweeney, Margaret M. Unassigned, Vowell, Denise Kathryn Wheeler, Thomas C. Wiese, John P. Williams, Mary Ellen Coster  Wolski, Victor J.

	Yock, Robert J. Zane, Daria J.
<b>Case flags</b>	All
<b>Open Cases</b>	Yes
<b>Closed Cases</b>	Yes
<b>Person Type</b>	All
<b>Terminal digits</b>	All
<b>Event Category</b>	All
<b>Event Subcategory</b>	All
<b>Docket Text</b>	summary
<b>QC Mode</b>	disabled
<b>Sort by</b>	case number
<b>Total Number of Docket Entries: 19</b>	



notifications on April 11, 2012. See Attachment A (portion of server log). I also contacted the Systems Deployment & Support Division (SDSD), and they conducted a separate search confirming that both registered email addresses were successfully receiving messages. See Attachment B (SDSD search results).

August 7, 2012



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Daffeh Hansford  
Unix Systems Administrator  
Court of Federal Claims



Apr 11 13:18:57 cofcdb sendmail[22213]: q3BHIV8b022213:  
from=<[uscfc\\_cmecf@ao.uscourts.gov](mailto:uscfc_cmecf@ao.uscourts.gov)>, size=3452, class=0, nrcpts=2,  
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relay=localhost.localdomain [127.0.0.1]  
Apr 11 13:18:57 cofcdb sendmail[22213]: q3BHIV8b022213: to=<[mike@cavelaw.com](mailto:mike@cavelaw.com)>,  
delay=00:00:00, mailer=relay, pri=63452, stat=queued  
Apr 11 13:18:57 cofcdb sendmail[22213]: q3BHIV8b022213:  
to=<[uscfc\\_cmecf@ao.uscourts.gov](mailto:uscfc_cmecf@ao.uscourts.gov)>, delay=00:00:00, mailer=relay, pri=63452,  
stat=queued  
Apr 11 13:18:57 cofcdb sm-msp-queue[5268]: q3BHIIja022104:  
to=[mike@cavelaw.com](mailto:mike@cavelaw.com),[uscfc\\_cmecf@ao.uscourts.gov](mailto:uscfc_cmecf@ao.uscourts.gov), delay=00:00:38,  
xdelay=00:00:00, mailer=relay, pri=153183, relay=[127.0.0.1] [127.0.0.1], dsn=2.0.0,  
**stat=Sent (q3BHIV8b022213 Message accepted for delivery)**  
Apr 11 13:18:57 cofcdb sendmail[22213]: q3BHIV8d022213:  
from=<[uscfc\\_cmecf@ao.uscourts.gov](mailto:uscfc_cmecf@ao.uscourts.gov)>, size=3452, class=0, nrcpts=2,  
msgid=<[1254728@ao.uscourts.gov](mailto:1254728@ao.uscourts.gov)>, proto=ESMTP, daemon=MTA,  
relay=localhost.localdomain [127.0.0.1]  
Apr 11 13:18:57 cofcdb sendmail[22213]: q3BHIV8d022213:  
to=<[brooke@cavelaw.com](mailto:brooke@cavelaw.com)>, delay=00:00:00, mailer=relay, pri=63452, stat=queued  
Apr 11 13:18:57 cofcdb sendmail[22213]: q3BHIV8d022213:  
to=<[uscfc\\_cmecf@ao.uscourts.gov](mailto:uscfc_cmecf@ao.uscourts.gov)>, delay=00:00:00, mailer=relay, pri=63452,  
stat=queued  
Apr 11 13:18:57 cofcdb sm-msp-queue[5268]: q3BHIIjil022098:  
to=[brooke@cavelaw.com](mailto:brooke@cavelaw.com),[uscfc\\_cmecf@ao.uscourts.gov](mailto:uscfc_cmecf@ao.uscourts.gov), delay=00:00:38,  
xdelay=00:00:00, mailer=relay, pri=153185, relay=[127.0.0.1] [127.0.0.1],  
dsn=2.0.0, **stat=Sent (q3BHIV8d022213 Message accepted for delivery)**



Information Technology  
Systems Deployment & Support Division

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Sender	Recipient	Subject	Date	Last State	IronPort Host
uscfc_cmeef@ao.uscourts.gov	mike@cavelaw.com	Activity in Case 1:03-w-00775-UNJ GULL...	04/11/12 13:19:06	Message Successfully delivered to mike@cavelaw.com at 74.114.177.227. Response 'OK: ironport102 queued as 9A0B51C6572'	ironport102
uscfc_cmeef@ao.uscourts.gov	brooke@cavelaw.com	Activity in Case 1:03-w-00775-UNJ GULL...	04/11/12 13:19:06	Message Successfully delivered to brooke@cavelaw.com at 74.114.177.227. Response 'OK: queued as 3D1641C656A'	ironport102
uscfc_cmeef@ao.uscourts.gov	mike@cavelaw.com	Activity in Case 1:08-w-00108-UNJ HARDY...	04/10/12 16:56:17	Message Successfully delivered to mike@cavelaw.com at 74.114.177.227. Response 'OK: ironport101 queued as DA5901C646E'	ironport101
uscfc_cmeef@ao.uscourts.gov	brooke@cavelaw.com	Activity in Case 1:08-w-00108-UNJ HARDY...	04/10/12 16:56:17	Message Successfully delivered to brooke@cavelaw.com at 74.114.177.227. Response 'OK: queued as 7A2441C646D'	ironport101

Logged in as: aotx (Logout)

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