

*Supreme Court of Justice of the Nation*

Buenos Aires, August 21, 2003.

Having reviewed the record of proceedings: Appeal on points of fact filed by Luis Manuel Neira and Virginia M. Catenazzi, appearing in their own right and on behalf of their minor son Federico Martín Neira in the case: Neira, Luis Manuel *et al.* vs. Swiss Medical Group S.A.", for decision over the admissibility thereof.

Whereas:

In view of the fact that the petitioners have cited reasons justifying the urgent attention of the matter set forth in the record of proceedings, it is deemed appropriate to accept the benefits of litigation at no provisional expense under the terms of the doctrine in Rulings: 313:1181; 321:1754, so that the complaint filed may be dealt with.

The grievances of the appellants are adequately addressed in the legal basis provided in the decision of the Public Prosecutor, which is shared by the Court and adopted for reasons of brevity.

Therefore, and in concordance with the opinion of the Public Prosecutor, the special remedy is hereby declared as admissible and the judgment appealed declared null and void. It is ordered that the record of proceedings be returned to the originating court in order that a new judgment is rendered through the appropriate person in accordance with the foregoing. Order to cover all costs. It is ordered that the complaint be attached to the principal. It is ordered that notice be given and that it be remitted. CARLOS S. FAYT - ENRIQUE SANTIAGO PETRACCHI - EDUARDO MOLINE O'CONNOR - ANTONIO BOGGIANO (dissenting)- GUILLERMO A. F. LOPEZ - JUAN CARLOS MAQUEDA (see Opinion).

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OPIN-//-

*Supreme Court of Justice of the Nation*

-//--ION OF JURIS DOCTOR JUAN CARLOS MAQUEDA

Whereas:

1) In view of the fact that the petitioners have cited reasons justifying the urgent attention of the matter set forth in the record of proceedings, it is deemed appropriate to accept the benefits of litigation at no provisional expense under the terms of the doctrine in Rulings: 313:1181 and 321:1754, so that the complaint filed may be dealt with.

2) The grievances of the appellants are adequately addressed in the legal basis provided in the decision of the Public Prosecutor, which is shared by the Court and adopted for reasons of brevity.

3) Furthermore, it should be noted that the foregoing does not imply any final decision over the admissibility of the claim filed by the petitioners, but rather it makes implicit an evaluation of the danger that would be present if the situation remains as it is, and is presented as an appropriate, immediate way of guaranteeing the minor access to the provision required by his state of health, without prejudice to the fact that a subsequent ruling could - depending on the degree of plausibility - resolve the interest at stake and the defendant's constitutional right to defense (Rulings: 320:1633 and case C.28.XXXVIII "Coto Centro Integral de Comercialización S.A. vs. Entre Ríos, Province of re: unconstitutionality" of October 10, 2002).

4) In this context - and without losing sight of the fact that the precautionary measures are not aimed at satisfying the purpose sought in the petition before due time, but rather, the case contains elements that enable us, prima facie, to recognize which are the urgent healthcare needs of

the infant - it is appropriate to remember that when it comes to rendering a judgment, the aforementioned documentation must be examined and a decision made, based on considerations of reasonableness, restraint and care to the consequences of the decision - particularly in view of the outlooks at the moment of resolving the different disputes established between the parties - regarding the scope of the new provisional measure.

Therefore, and in concordance with the opinion of the Public Prosecutor, the special remedy is hereby declared as admissible and the judgment appealed declared null and void. It is ordered that the record of proceedings be returned to the originating court in order that a new judgment is rendered through the appropriate person in accordance with the foregoing. Order to cover the costs. It is ordered that the complaint be attached to the principal. It is ordered that notice be given and that it be remitted. JUAN CARLOS MAQUEDA.

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DISS-//-

*Supreme Court of Justice of the Nation*

-//-ENT OF ANTONIO BOGGIANO

Whereas:

In view of the fact that the petitioners have cited reasons justifying the urgent attention of the matter set forth in the record of proceedings, it is deemed appropriate to accept the benefits of litigation at no provisional expense under the terms of the doctrine in Rulings: 313:1181; 321:1754, so that the complaint filed may be dealt with.

The special remedy, the rejection of which gives rise to this complaint, is not aimed at achieving a final or comparable judgment (Article 14 of Law 48).

Therefore, the complaint is hereby dismissed. It is ordered that the petitioners be informed that they must regularly report on the status of the benefit of litigation at no expense, with a warning that, should no response be forthcoming, it has been dismissed. It is ordered that notice be given and, following the return of the principal record of proceedings, that it be docketed. ANTONIO BOGGIANO.

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