



FEDERAL CLAIMS BAR ASSOCIATION

Summer 2007 Newsletter

Caniculares Dies



These may be the “dog days of summer” but the work of the court, as our practitioners know full well, continues on. By the way, it continues to amaze me what the Internet can put readily at one’s fingertips: as I began this message, I wondered about the derivation of the phrase, “dog days

of summer.” A simple search online took but seconds: Wikipedia, citing the Old Farmer’s Almanac, describes the dogs days as the period beginning July 3 through August 11 tracking the ancient rising of the dog star, Sirius. The phrase has since come to mean the sultry days of summer, or stagnant days of little or no activity.

For the court, the summer is generally a time of transition. **Jim Wang**, having served the court quite well as our Systems Manager, has become the Chief Deputy Clerk for Administration and Information Technology. He will continue to work closely with our esteemed Clerk of Court **Brian Bishop** and Chief Deputy Clerk for Operations **Lisa Reyes**. In my own chambers, I bid farewell to my recent Judicial Assistant **Genny McGee**, who has returned to her beloved Miami,

and have welcomed on board her successor **Ellan Jackson**. Ellan was secretary from 1999 to 2002 to Margaret Earnest, Brian Bishop’s predecessor as Clerk of the Court. It is nice to bring Ellan back to the court family after a 5-year hiatus in the private sector.

On June 11, three **Special Masters of the court, George Hastings, Patricia Campbell-Smith, and Denise Vowell**, presided over the long-anticipated first trial in the Omnibus Autism Proceeding. The slightly more than two-weeks trial received considerable media attention and was held in the principal courtroom of the Court of Appeals for the Federal Circuit (to which we owe a debt of gratitude). The

Office of Special Masters went to great lengths to accommodate a large and steady stream of courtroom attendees and to coordinate audio accessibility for remote observers as well as daily transcripts. I would like to express my appreciation

REGISTER NOW

- *JOINT COURT OF FEDERAL CLAIMS / BAR ASSOCIATION ANNIVERSARY CELEBRATION, September 20 at the National Courts Building*
- *20th ANNUAL JUDICIAL CONFERENCE, October 10-11 in Boulder, Colorado*

Space is Limited. Registration Information for Both Events Available at www.cfcbar.org

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to **Chief Special Master Gary Golkiewicz**, the presiding Special Masters, the staff of the Office of Special Masters, and the Office of the Clerk of the Court for their professionalism in administering this trial.

In late June, I issued General Order No. 44, making some technical changes in the Court's program for automatic referral to alternative dispute resolution (ADR) of the cases of certain of the court's presiding judges. What began as the court's "Pilot" program has now matured; upon consultation with **Judge Marian B. Horn**, chair of the court's ADR Committee, the previous General Order has now been superseded by General Order No. 44, "Notice of ADR Automatic Referral Program and ADR Automatic Referral Procedures." Other than the renaming of the program and separately listing the presiding and ADR referral judges, the "Automatic" Program is the same as the former "Pilot" program. For more information and a listing of the participating judges, see the court's website, www.uscfc.uscourts.gov, under the "ADR" or "Rules and General Orders" tabs.

Also in late June, the court – with the co-sponsorship of the CFC Bar Association – held its annual ceremonial session for admission to the court's bar (distinct from voluntary membership in

the Bar Association) of the eligible law clerks. Many, although not all, of these law clerks are completing their tenure with the court as of the end of the summer and we wish them well, both in their legal careers and especially as ambassadors, at least informally, of the Court of Federal Claims.

Their successors will be arriving throughout August, generally, and into September. The judges will welcome them formally, again in cooperation with the Bar Association, at an introductory breakfast in September.

I look forward to seeing as many members of the Bar Association as possible at the reception on September 20 commemorating both the 25th anniversary of the Federal Courts Improvement Act of 1982, which established the modern court, and the 20th anniversary of the founding of the court's Bar Association. In October, as described separately in this newsletter, the court heads west for its annual Judicial Conference. I would be most remiss if I did not take this occasion in advance to thank **CFC Bar President Marc Smith and Judge Nancy Firestone** for their extraordinary efforts in preparing for this ground-breaking event.

President's Message ***A National Court, A National Bar***



Even in a very busy year for the Bar Association, July 12th stands out as an exceptional day. On that day we held our annual summertime "brown bag" program focused on "Practice at the Court of Federal Claims." This program is designed primarily for summer associates, law clerks and interns, but many seasoned attorneys attend as well. This year's edition, which was moderated by **Scott McCaleb**, featured outstanding presentations by three well-respected jurists – **Chief Judge Edward Damich, Judge Nancy Firestone and Judge Emily Hewitt** – as well as by several leading practitioners – **Melonie McCall, Evan Pritchard and Jerry Stouck**. It was a spirited discussion of many of the Court of Federal Claims' areas of practice, along with helpful insights on the "dos and don'ts" of litigation before the Court.

Like all of our brown bags, we held the program in the lower level of the Tayloe House, in the Court of Federal Claims complex– an elegant setting indeed! However, what made the event memorable for me was the turnout. We were literally bursting at the seams with nearly 100 people in attendance in a room that had about 55 closely-spaced chairs. To see so many new and budding attorneys attend an event like this on a hot July day – without even the promise of a free lunch (but we did have cookies!) – was very encouraging indeed.

Still, I could not help but think about all of the people who do not work in the Washington, DC area who

were not there. After all, the Court of Federal Claims is a national court, with cases throughout the United States. Our Bar Association is geographically diverse, as well. In fact, more than half of our membership resides outside of the Washington, DC area. Unfortunately, it's often difficult for those "outside the Beltway" members to attend many of our programs. As we continue to grow as an association, we will strive to find ways to ensure that all of our members, regardless of where they live, receive all the benefits of membership.

One major step that we have taken in that direction is the annual Judicial Conference, which for the first time will be held west of the Mississippi. Scheduled for October 10th and 11th, the Judicial Conference will be held in beautiful Boulder, Colorado, and will feature topics of interest to Western practitioners, including panels on water law, Tribal claims against the United States, Fifth Amendment takings, and patents. For those of you in the mountain states and in the West, this will be a unique opportunity to meet the judges of the Court of Federal Claims and hear about the latest developments in the law – without having to travel to DC. And for those of you who are in DC or elsewhere in the East, October is a very nice time to travel to the Rocky Mountain region! For more information about this conference, as well as to register, please see the Bar Association website at www.cfcbar.org. As always, Bar Association members will receive a significant discount on the registration fee. I look forward to seeing you there.

And for those of you located in the Washington, DC area, we will have a truly special event for you this Fall that won't require air travel. On September 20th we will celebrate both the Court of Federal Claims' twenty-fifth anniversary and the Bar Association's twentieth anniversary. This should be a truly special event, with many of the judges of the Court, as well as nearly all of the past presidents of the Bar Association, in attendance. The celebration will include a reception in the courtyard of the National Courts Building complex. In the hope of having as many of the "family" there as possible, we are making this event free of charge to Bar Association members. Please check the website for registration information.

As I have done in prior Newsletters, let me conclude by thanking some of the many people who work tirelessly and selflessly to make the Court of Federal Claims Bar Association such a wonderful organization. This issue I would like to focus on my three fellow Officers: our **President-Elect Brad Fagg, Secretary Melonie McCall, and Treasurer Lew Wiener**. These three individuals contribute to the success of our Association in innumerable ways, typically working behind the scenes without much public recognition. There is little that this Association has accomplished in the past few years that didn't involve Brad, Melonie or Lew in some way, and we are very fortunate that they are willing to so generously give of their time and wisdom.

Marc Smith, President

Reception to Celebrate 25th Anniversary of Court, 20th Anniversary of Bar Association

On September 20, 2007, from 5:00 p.m. to 7:00 p.m., at the National Courts Building, the Court of Federal Claims Bar Association will host a cocktail reception, to celebrate the 25th Anniversary of the National Courts Improvement Act, which created the Court of Federal Claims, as well as the Court of Appeals for the Federal Circuit, in their modern form. The reception, featuring hors d'oeuvres, a hosted bar, and a popular jazz trio, will commemorate the occasion by honoring the past presidents of the Association. Most of the judges of the Court and several hundred bar members and guests are expected to attend. Admission is free to members, \$25 for non-members (\$35 after September 6). With the Court's Judicial Conference being convened this year in Boulder, Colorado, the Joint Anniversary Celebration will provide a pleasant and convenient opportunity for the Court community to meet in Washington, DC, during the fall season to mark these anniversary milestones. To register, and for other information, please visit www.cfcbar.org.

MEET THE COURT

(Second in a Series about the People of the Court of Federal Claims)



Chief Deputy Clerks Jim Wang and Lisa Reyes

What do a former architect and an avid Steelers fan have in common? Besides their near identical answers to what they like about their job, Lisa Reyes and Jim Wang are the Court's Chief Deputy Clerks. As such, they manage the operations and infrastructure that ensure the Court functions. Since 2003, Lisa has been the Court's Chief Deputy Clerk for Operations. Since this July, Jim has been the Court's Chief Deputy Clerk for Administration and Information Technology.

Lisa came to the Court from her attorney position with the Allegheny (PA) Bar Association. Noticing an ad for an assistant clerk position, she left behind her beloved Pennsylvania (but not her Steelers season tickets). Since then, she has risen through the ranks, serving as Assistant to the Clerk of the Court, Staff Attorney for the Court (working with the Court's judges on a variety of procedural, ethics, administrative and disciplinary matters), and Deputy Clerk. In 2003, she assumed her current responsibilities as the Chief Deputy Clerk for Operations. As such, she is responsible for the work of approximately ten clerks, including those stationed at the Court's little-known National Vaccine Compensation Act office, a few blocks away from the National Courts Building. Each clerk is assigned two to three judges' chambers and handles inquiries from as the public as well.

Lisa frequently mentions that the job presents something different every day. That is not surprising, considering Lisa herself fields an average of 50 phone calls per day, in an office that fields approximately 200 calls per day from judges' chambers, other courts, attorneys, potential and actual litigants, and others curious about the Court's history. Calls run the gamut from how to file, how to get admitted, attorney admission and discipline, procedural questions, and questions about the Court's history. In fact, until about three years ago, Lisa's office maintained the docket back to the Courts' Civil War roots, and still fields calls concerning not only the Court of Federal Claims, but its various predecessors (the documents now are cared for by the Administrative Office of U.S. Courts).

Among the questions consistently asked, she offers some unique to the Court, others perhaps not: "Where is the Court's building in my district?"; "Isn't admission to my local district court good enough?"; "How do you think I should respond to this judge's order? What does my judge prefer?" Lisa explains that, although the Clerk's office does not give legal advice, interpret a judge's order, or advise on how to respond to particular orders, all questions require the clerks to be diplomatic and, in some cases, simply "to provide an ear."

Lisa names the Court's continuing effort to make its procedures more "e-friendly," its procedures and dockets more transparent, and to incorporate its e-filing program into the Court's rules as part of the challenges that lie ahead. She observes that today's increasing reliance upon the internet has transformed the Clerk's operations, both physically and otherwise. Thus, gone are the days when clerk stations were open to the Office's "Front Desk," to accommodate a significant walk-up trade. Now, a clerk's connection to the public work is more likely to be by computer or by phone, necessitating more private work spaces.

Reflecting on what she likes about her work at the Court, she cites the Court's nature and the

people she works with. The Court's national and diverse subject matter jurisdiction puts her into daily contact with a number of interesting and very different people, and infuses her job with "a little bit of everything," she explains. She refers to her work with the judges as a "very pleasant experience," and takes pride in noting that "customers" frequently tell her that the Clerk's office is the most helpful. They relate that clerks simply are more willing to help with questions and provide more information than her callers expect. Thus, when asked what she would want practitioners to know about her operation, she answers, unsurprisingly, "don't hesitate to call - it's always easier to fix it before filing." The Court's main number is 202-357-6406.

Jim Wang, Lisa's counterpart, is the Chief Deputy Clerk for Administration and Information Technology. An avid tennis player and amateur cook, Jim also came to the Court as a result of an ad that helped solidify his then-recent career transition from architecture to IT. As a practicing architect, Jim became interested in IT, and through self-study and professional necessity, became sufficiently proficient to make the switch. He finds the same marriage of creativity and analytical rigor ("first you design it, and then you have to figure out how you're going to get there") in the IT world as in architecture.

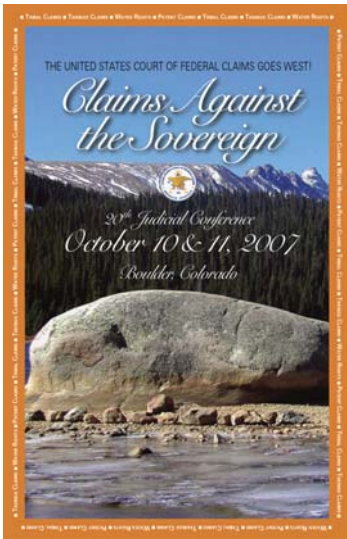
As a result of the switch, Jim has risen through the ranks at the Court, and now manages

approximately 14 people in two departments, supervises an HR director and two IT managers, and personally serves as the Court's IT Director. As such, he is responsible for a host of administrative matters, including human resources, budget and finance, space management, and procurement.

Jim explains his job simply as "managing people," and the reach of his IT domain simply as: "anything that has a plug," a domain that reaches the judges' chambers, the Clerk's office and the office of the Vaccine Act special masters' office a few blocks from the Court. In his technical capacity, Jim serves on the Court's IT Committee, chaired by **Judge Allegra**, and advises Judge Allegra, in the latter's capacity as a member of the Federal judiciary's National IT Committee.

Although Jim has less contact with people outside of the Court, he stresses the same "customer" focus as Lisa, noting that his job is simple: "meet the judges' needs and assist in the administration of justice." Nonetheless, one of Jim's largest projects is aimed primarily at the public: the Court's current development of a new web site. As Jim explains it, the project is intended to make the Courts' web site more customer friendly, and afford it a greater search capability. In that capacity, Jim has worked closely with the **Court of Federal Claims Bar Association** to determine the Court's customer's needs.

Register for the Judicial Conference at www.cfcbar.org



The Court of Federal Claims is holding its first-ever west of the Rockies Judicial Conference on October 10-11 in Boulder, Colorado. Space is limited, so register today. Thanks to the active participation of the Colorado Bar Association, Boulder County Bar Association, Denver Bar Association, the Wyoming State Bar, and the University of Colorado Law School, the conference is being enthusiastically received. *Non-members still may qualify for the Bar Association Member rate and automatically become members for 2008 by joining now.* Visit www.cfcbar.org for registration, sponsorship and CLE details.

CDA and Jurisdiction Brown Bag Coming September 19

The Court of Federal Claims Bar Association will host a free, "brown bag" CLE program entitled, "What Is a Claim For?, 'Operative Facts' and the Scope of Contract Disputes Act Jurisdiction."

The one-hour program will take place at 12:00 noon on Wednesday, September 19th, in the Tayloe House, which is adjacent to the National Courts Building, 717 Madison Place, Washington, D.C.

The seminar will focus upon the requirement to obtain a contracting officer's final decision before filing suit. This deceptively simple rule is a regular source of controversy. For example, although a claimant may present new evidence, argue new legal theories, and seek greater damages once in litigation, the Court and boards must dismiss "new"

claims with "operative facts" the CO has not considered. This distinction can affect the course and even the outcome of a CDA case.

Panelists will include: Judge Francis Allegra and practitioners from the private and public bar. Brown Bag CLE programs are informal roundtable sessions that enable attendees to network and exchange ideas in a collegial, relaxed environment.

For more information regarding the program, please contact Kyle Chadwick (Kyle.Chadwick@usdoj.gov) or John McCarthy (JMcCarthy@Crowell.com), co-Chairs of the Government Contracts Committee of the Court of Federal Claims Bar Association.

Membership Has Its Benefits

Join today and start receiving all of the benefits of membership now. These include discounted member rates for the October 10-11 Judicial Conference and complimentary admission to the Joint Anniversary Reception celebrating the Court's 25th and Bar Association's 20th Anniversaries. Members also will receive a copy of the entirely new edition of the Acclaimed Deskbook for Practitioners when it is published later this year. Members also receive the CFCBA's monthly "Executive Summary," which highlights the month's Court of Federal Claims decisions of interest; may list their practices and firm information on the Bar Association's online "find an attorney" feature; and participate in the Association's substantive committees (takings, government contracts, tax, vaccine) or standing committees (CLE, Communications, Judicial Conference, Membership, Publications, Rules). To start enjoying your benefits of membership, visit www.cfcbar.org and join today.

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