

U.S. COURT OF FEDERAL CLAIMS OFFICE OF SPECIAL MASTERS

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July 13, 2004

Dear Counsel:

I am writing to inform you of the upcoming United States Court of Federal Claims Judicial Conference. The Court's Conference is scheduled for November 9 and 10 of 2004, to be held in Washington, D.C. While the Conference will present a variety of interesting and useful information, a significant portion of the Conference will focus on vaccine causation - valuable information for litigating vaccine injury cases before the special masters.

On the afternoon of November 9, a three-hour block of time will be devoted to discussing the causation-in-fact issue. With the able assistance of Professor Peter Meyers of George Washington Law School, Linda Renzi from the Department of Justice, and Ghada Anis of Miller & Associates, we have put together a stellar group of panelists to discuss this critical issue and, thereby, enhance our understanding of the legal and medical issues involved in determining causation. While formal invitations will be mailed this fall to all of you as members of the court's Bar, I would like at this time to invite and encourage your attendance. Let me tell you a bit about the program.

The vaccine portion of the Conference will be devoted to causation standards. As you are well aware, there exists a substantial disagreement over how much and what types of evidence are necessary to meet the Federal Circuit's test of "logical sequence of cause and effect." The program will explore these issues from several perspectives. First, there will be a panel discussing the issue from "outside" the vaccine litigation. Catharine Reeves, a Department of Justice vaccine attorney, will moderate a panel that will include Tim Westmoreland, a Georgetown Law School professor and part-time aide to Congressman Henry Waxman. Professor Westmoreland was intimately involved in the development of the Act and will discuss the Congressional perspective of causation-in-fact under the Act. Kathleen Stratton will discuss how the Institute of Medicine approaches vaccine causation. Dr. Neal Halsey from Johns Hopkins will discuss the medical perspective of causation and Professor Michael Green of Wake Forest Law School will discuss causation in the civil justice system. That will be the first panel.

The second panel will be moderated by the Honorable Randall Rader of the United States Court of Appeals for the Federal Circuit. The panel will be comprised of Special Master Richard Abell, Mark Rogers, Acting Deputy Director of the Torts Branch within the Department of Justice, and two petitioners' counsel: Mindy Roth of Britcher, Leone & Roth, and John Kim of The Kim Law Firm. This panel will help us understand the legal principles of causation-in-fact. Since there is much legal debate as to the interpretation of the Federal Circuit's decisions on causation-in-fact, which are binding on the special masters, specifically, what proof is necessary to establish "a logical sequence of cause and effect," the lawyers will discuss from their perspectives what the Circuit requires in terms of both type and quantity of proof to meet that test for causation.

After Panel II's presentation on the law, Judge Rader will turn back to Panel I to discuss a hypothetical fact pattern (currently being drafted.) Panel I will have an opportunity to analyze this hypothetical, applying the principles of causation they discussed during their initial presentation and, hopefully, commenting on how the legal discussion impacts or modifies their views on causation. Judge Rader will also address questions to the members of Panel II and lead an interactive discussion between the two panels in an effort to meet our primary goal in this session: to educate the Bar on the issue of causation-in-fact.

The goal of the Program is to provide an intellectually interesting and informative discussion/debate on this critical issue of causation. While no one anticipates an answer to "what is causation?", it is anticipated that attendees' knowledge of the causation issue and understanding of the different perspectives on the issue will be greatly advanced and in doing so assist in the legal presentation before the special masters. It will be a Program worth attending.

Understanding the cost and difficulty for outside counsel to attend a conference in Washington, I unabashedly note the following other incentives. In addition to the many Conference programs, one of which is an extensive examination of the use of experts, you will have an opportunity to meet in-person the special masters, officials from the two departments, HHS and DOJ, and members of the Vaccine Advisory Commission who will attend the vaccine session, and to socialize with the special masters and judges at the "Lunch with a Judge" program. If that is not enough, electronic filing training and registration for the Court's Electronic CM/ECF filing system will be available both days. The court is moving to electronic filing in vaccine cases, beginning with some test cases this fall. Counsel will have to take a tutorial and pass a test to be registered for its use. The electronic filing system will be demonstrated throughout the conference and court representatives will be available to answer questions. Lastly, the all-important CLE credit will be available.

I believe wholeheartedly that the Bench and Bar must communicate periodically to improve the system of justice. I believe this program can potentially aid greatly the presentation of cases in the Vaccine Program. To do so, however, requires the Bar's support. I am asking for that support.

If you have any questions or suggestions about the Conference or vaccine session, please do not hesitate to contact me. Also, if you have causation issues you would like the panelists to address or specific questions for the panelists, please submit them to me. I have set up a special e-mail address to handle your input. The address is: **OSM_Judicial_Conference@ao.uscourts.gov**.

Thank you in advance for your support. I look forward to seeing you in November.

Sincerely,

Gary J. Golkiewicz
Chief Special Master