

The Senior Judges in the U.S. Court of Federal Claims

For more than 160 years, the U.S. Court of Federal Claims, along with its predecessor, the U.S. Court of Claims, has acted as “The People’s Court,”¹ sometimes even referred to as the “keeper of the nation’s conscience.”² As Abraham Lincoln stated in his Annual Message to Congress in 1861, “it is as much the duty of government to render prompt justice against itself in favor of citizens, as it is to administer the same between private individuals.” While some may conflate the Court of Federal Claims with small claims courts across the country, there is nothing small about the Court of Federal Claims.

Indeed, the court disposed of 569 complaints last year where the total amount claimed equaled \$995,275,774,000. Of the cases disposed, the court rendered \$803,511,996.95 in judgments.³ While these amounts are impressive, it is especially notable that the court did so while weathering vacancies in six of its allotted 16 judgeships. In other words, in one year alone, the court adjudicated a caseload involving nearly \$100 billion while missing over a third of its allotted judges and staff. Bearing a significant portion of this significant caseload and lack of jurists are the eight senior judges whose role is the subject of this article and without whom the court would not be able to timely complete its work.⁴ In the words of William Gladstone, “Justice delayed, is justice denied.” Any delay in adjudicating \$100 billion in claims against the United States by its citizens is certainly justice denied. Therefore,



The sitting judges of the U.S. Court of Appeals for Federal Claims.

while the court awaits the nomination and confirmation of judges to fill its respective vacancies, the senior judges subject to recall will continue to fill the void alongside their active counterparts.

History and Purpose of the Court

As enumerated above, the Court of Federal Claims is one of the oldest federal courts in the country and exists as a federal court of record with national jurisdiction. Its predecessor, the Court of Claims, was created on Feb. 24, 1855, when President Franklin Pierce signed legislation to provide for the determination of private claims against the U.S. government. Initially, the Court of Claims lacked the essential judicial power to render final judgments. However, legislation was passed in 1866 that resolved this oversight at President Abraham

Lincoln's insistence during his Annual Message to Congress that same year.⁵

The court's jurisdiction was significantly expanded with the passage of the Tucker Act in 1887. Codified at 28 U.S.C. § 1491, the Tucker Act provides in relevant part:

The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.⁶

In other words, pursuant to the Tucker Act, the court's nationwide jurisdiction includes all claims against the government except tort, equitable, and admiralty claims. To that end, the court's jurisdiction includes claims for just compensation for the taking of private property, refund of federal taxes, military and civilian pay and allowances, damages for breach of contract with the government, claims for patent and copyright infringement against the United States, some suits by Indian Tribes, and both pre-award and post-award bid protest suits by unsuccessful bidders on government contracts.⁷ Additionally, the National Childhood Vaccine Injury Act,⁸ enacted in 1987 and effective on Oct. 1, 1988, created the Office of Special Masters⁹ to adjudicate petitions for compensation due to vaccine-attributed injuries. The vaccine program is a "no-fault compensation program whereby petitions for monetary compensation may be brought by or on behalf of people allegedly suffering injury or death as a result of the administration of certain compulsory childhood vaccines. Congress intended that the vaccine program provide individuals a swift, flexible, and less adversarial alternative to the often costly and lengthy civil arena of traditional tort litigation."¹⁰ Moreover, the court has the unique authority to act on congressional references of legislative proposals for compensation of individual claims. As codified in 28 U.S.C. § 1492, "Any bill, except a bill for a pension, may be referred by either house of Congress to the chief judge of the United States Court of Federal Claims for a report in conformity with [U.S. Court of Federal Claims Procedure]."¹¹ In other words, either the House of Representatives or the Senate may refer a bill to the chief judge for an investigation and report to Congress. A judge of the court is then assigned to act as the "hearing officer" and preside over the proceedings. A three-judge review panel then submits a report to Congress for its "consideration and disposition of such claims for compensation."¹²

The Judges and Statistics of the Court

The Court of Claims initially consisted of three judges, which was expanded to five in 1863. The judges considered evidence proffered by claimants and weighed testimony taken by permanent or special commissioners. While employed by the court, the commissioners were dispersed across the United States. The five judges heard the case *en banc* if oral argument was requested and appeal to the Supreme Court was allowed if the amount in dispute was greater than \$3,000. However, the work of the court in this manner became unsustainable as the government grew during World War I. So in 1925, Congress enacted legislation to create a separate trial division of seven commissioners and elevated the five judges to an appellate role. The trial commissioners functioned as "special masters in chancery" and formal proceedings were conducted in either Washington, D.C., or in court facilities in other locations as amenable to the parties, much as they are today.¹³

In 1948, the commissioners were authorized to make recommendations for conclusions of law, and the number of commissioners was increased to 15 in 1953. In 1966, Congress increased the number of appellate judges from five to seven and provided that they would be appointed by the president with life tenure. In 1973, the commissioners became known as trial judges and their number increased to 16 by 1977.¹⁴

The modern court was created via passage of the Federal Courts Improvement Act of 1982 whereby the U.S. Court of Appeals for the Federal Circuit was created by combining the appellate division of the Court of Claims with the U.S. Court of Customs and Patent Appeals. The trial division of the Court of Claims became the U.S. Claims Court, and in 1992, the name was changed to the present Court of Federal Claims.

The court today consists of 16 "active" judges, each of which is appointed by the president and subject to confirmation by the Senate for a term of 15 years.¹⁵ But, as enumerated above, the court has had multiple vacancies in recent years. Specifically, 2012 was the last year the court had its full complement of judges. The historical staffing of the court is as follows:

2012: 16 active judges
2013: 14 active judges
2014: 10 active judges
2015: 11 active judges
2016: 10 active judges

Nonetheless, the court has adjudicated a number of cases involving the staggering dollar amounts as set forth in the chart below.

Without its full complement of judges but with an increasingly

	Complaints Disposed of	Total Amount Claimed	Sum of Judgments Rendered	Additional Counter-Claims or Offsets	Contract Cases Seeking Injunctive or Declaratory Relief
FY 2012	607	\$46,408,652,000.00	\$810,147,114.94	\$3,542,333.35	92
FY 2013	590	\$5,626,189,000.00	\$1,088,234,655.18	\$3,620,620.61	105
FY 2014	703	\$5,534,021,000.00	\$935,532,911.22	\$26,248,136.44	100
FY 2015	638	\$211,811,626,000.00	\$930,901,654.41	\$0.00	124
FY 2016	569	\$995,275,774,000.00	\$803,511,996.95	\$6,658,512.48	120

complex and valuable caseload, the court has depended on its senior judges to execute more than their respective share of the work required of the court.

The Senior Judges of the Court

Regardless of age, the title "senior judge" is conferred upon a judge who retires upon the completion of his or her 15-year term.¹⁶ A judge reaching the requisite age and years of service who retires before the end of a 15-year term also receives the title of "senior judge."¹⁷ Retired senior judges receive an annuity but may elect to relinquish the title of senior judge and the associated annuity in order to engage in the practice of law or to fully retire.¹⁸ Pursuant to 28 U.S.C. § 178(d), senior judges are subject to "recall" at the discretion of the court's chief judge, "to perform such judicial duties with the Court of Federal Claims as may be requested of the retired judge for any period or periods specified by the chief judge." In order to continue receiving an annuity, a senior judge must serve up to 90 days in a year if asked to do so by the chief judge, unless the senior judge is unable to do so because of illness or disability. Notably, while the acts and decisions of a senior judge performing judicial duties in the court have the same force and effect as those of judges in regular active service, the number of senior judges is not counted toward the 16 authorized judgeships of the court. The number of senior judges serving the court since 2012 is as follows:

2012: 7 senior judges
2013: 7 senior judges
2014: 6 senior judges
2015: 6 senior judges
2016: 9 senior judges

Currently serving the court are the eight senior judges profiled in more detail below.¹⁹

Senior Judge Eric G. Bruggink

Judge Eric G. Bruggink was appointed a judge of the Court of Federal Claims by President Ronald Reagan on April 15, 1986. Judge Bruggink assumed senior status in April 2001, although he continues to serve on the court. He is a *cum laude* graduate of Auburn University, receiving a B.A. in sociology in 1971 and an M.A. in speech in 1972. Judge Bruggink received his J.D. in 1975 from the University of Alabama School of Law, where he was a Hugo Black Scholar and the note and comments editor of the *Alabama Law Review*.

Judge Bruggink was appointed director of the Office of Appeals Counsel of the U.S. Merit Systems Protection Board in November 1982 and served in that position until his appointment to the Court of Federal Claims. He formerly served as a law clerk to Chief Judge Frank H. McFadden of the Northern District of Alabama and as an associate with the law firms of Steiner, Crum & Baker in Montgomery, Ala., from 1979 to 1982 and with Hardwick, Hause & Segrest in Dothan, Ala., from 1976 to 1977. He was assistant director of the Alabama Law Institute from 1977 to 1979, during which time he established the Office of Energy and Environmental Law and served as its first director.

Born in Kalidjati, Indonesia, he became a naturalized citizen of the United States in 1960 and speaks Dutch. Judge Bruggink is married to Melinda Harris Bruggink and has two sons, John and David. He is a member of the Alabama State Bar, the District of Columbia

Bar, the Federal Circuit Bar, and the Bar of the U.S. Supreme Court.

Among the notable cases on his docket have been the judicial pay cases, several Native American trust claims, numerous savings and loans cases, as well as offshore oil lease contracts, one of which resulted in a judgment of over \$1 billion. In addition to his regular caseload, Judge Bruggink is active in mediating cases for other judges on the court, having assisted in hundreds of cases over 30 years.

Senior Judge Lynn J. Bush

Judge Lynn J. Bush was nominated by President Bill Clinton on June 22, 1998, and appointed a judge of the Court of Federal Claims on Oct. 22, 1998. Judge Bush is the first African-American woman to be appointed to the court and the second African-American to serve on the Court of Federal Claims. She is a 1970 graduate of Antioch College in Yellow Springs, Ohio, and a 1970 Thomas J. Watson Fellow. Judge Bush received a J.D. from Georgetown University Law Center in 1976.

From 1996 until she was appointed to the court in 1998, Judge Bush was an administrative judge with the U.S. Department of Housing and Urban Development (HUD) Board of Contract Appeals. Her duties there included the adjudication of federal contract claims for HUD and the Federal Emergency Management Agency. Prior to her appointment as an administrative judge, Judge Bush served as a civilian attorney with the U.S. Department of the Navy. She began as a senior trial attorney with the Naval Facilities Engineering Command (NAVFAC) in 1987 and, after two years, was named counsel for a NAVFAC field division in 1989.

At the beginning of her legal career, Judge Bush litigated before the Court of Federal Claims as a trial attorney handling complex civil cases in the Commercial Litigation Branch (formerly the Court of Claims section) after joining the Department of Justice's (DOJ) Civil Division in 1976. She practiced before the Court of Federal Claims and the U.S. Court of Appeals for the Federal Circuit for 11 years in that capacity.

Judge Bush is a member of several federal and state bars, including the Supreme Court, District of Columbia, and Arkansas bars. She resides in the Washington, D.C., metropolitan area.

Senior Judge Edward J. Damich

Judge Edward J. Damich was appointed to the U.S. Court of Federal Claims in 1998 by President Clinton. He was designated chief judge by President George W. Bush and served as chief judge from 2002 to 2009. In 2013, upon completion of his term, he assumed status as a senior judge.

Prior to his appointment on the court, Judge Damich spent most of his professional career as a professor of law, first at Delaware Law School (now Widener University School of Law) in Wilmington, Del., then at George Mason University School of Law in Arlington, Va. He also was a commissioner of the Copyright Royalty Tribunal and served as chief intellectual property counsel for the Judiciary Committee of the U.S. Senate while Sen. Orrin Hatch was chair.

His expertise is in intellectual property. This was his focus at Columbia University School of Law, where he earned an LL.M. and J.S.D., and it accounts for his appointments to the Copyright Royalty Tribunal and the Senate Judiciary Committee staff. During his tenure on the committee staff, he worked on the Digital Millennium Copyright Act of 1998, which was and remains the first and most comprehensive copyright legislation on digital technology and the internet. Judge Damich also worked on the American Inventors

Protection Act, which was enacted in 1999. He was a member of the U.S. delegation at the World Intellectual Property Organization (WIPO) diplomatic conference, which concluded with the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. He has often been called upon by the U.S. Patent and Trademark Office, the Department of Commerce, and private associations to speak to foreign judges and officials here and abroad. This work has taken him to Thailand, Cambodia, Vietnam, Laos, Malaysia, Fiji, Croatia, Morocco, South Africa, Peru, Paraguay, Colombia, Brazil, and the Republic of Georgia. He is the author of numerous articles and has testified before committees of both houses of Congress. He has taught intellectual property subjects as an adjunct professor at the law schools of Catholic University, Georgetown University, and George Washington University.

Perhaps the most interesting case before Judge Damich was *Zoltek v. United States*, which was recently settled. *Zoltek* was a patent case and involved the intersection of patent law, takings law, and national security law. His decisions in this case considerably added to the jurisprudence of the court's patent jurisdiction. Most notably, Judge Damich held that patent infringement by the United States could be considered a taking under the Fifth Amendment to the U.S. Constitution. Although this conclusion was reversed by a panel of the U.S. Court of Appeals for the Federal Circuit, the panel's decision was later vacated by the court *en banc*.²⁰

Judge Damich earned his J.D. at the Catholic University School of Law. His grandparents came to the United States from Croatia, and, before he entered government service, he was active in promoting Croatia's independence. He was the first president of the National Federation of Croatian Americans and testified before the Committee on Foreign Affairs of the U.S. House of Representatives in support of this cause. He is active in his parish, St. Matthew's Cathedral in Washington, D.C., and is a member of the Order of Malta.

Senior Judge Nancy B. Firestone

Judge Nancy B. Firestone joined the Court of Federal Claims in 1998 and was appointed by President Clinton. Previously, she was a deputy assistant attorney general in the Environment and Natural Resources Division at the DOJ. Before serving as a deputy assistant attorney general, Judge Firestone worked at the Environmental Protection Agency (EPA) where she served as the associate deputy administrator and as a judge on the Environmental Appeals Board. She began her career working in the appellate section of the Environment and Natural Resources Division of the DOJ. She was an appellate attorney for five years before taking on various management positions in the division. She moved to the EPA in 1989 and returned to the DOJ in 1995. Judge Firestone has also been an adjunct professor of law at Georgetown University Law Center since 1985, where she received the Vicennial Medal in 2010 and the Charles Fahey Distinguished Adjunct Professor Award in 1999.

Judge Firestone received her J.D. with distinction in 1977 from the University of Missouri-Kansas City School of Law and her B.A. in 1973 from Washington University in St. Louis.

Over the course of her nearly 20-year career on the Court of Federal Claims, Judge Firestone has resolved more than 1,000 claims against the United States and has issued opinions in many cases that have had a large precedential impact. For example, over a 14-year period, Judge Firestone resolved five significant cases related to the allocation of hundreds of millions of dollars in pension benefits upon the sale of

business segments with government contracts.²¹ Additionally, Judge Firestone has decided several noteworthy tax cases involving international tax law questions²² as well as the resolution of several significant employee pay disputes.²³ Finally, Judge Firestone has been involved in deciding many Fifth Amendment taking claims and is currently in trial to resolve *Ideker Farms v. United States*,²⁴ an action brought by more than 300 farmers and landowners in five states along the Missouri River who claim that the United States' actions in managing the Missouri River to meet federal requirements under the Endangered Species Act have resulted in a taking of their property.

Senior Judge Bohdan A. Futey

Judge Bohdan A. Futey was nominated to the Court of Federal Claims on Jan. 30, 1987, and entered on duty May 8, 1987. He graduated from Western Reserve University, receiving a B.A. in 1962 and an M.A. in 1964, and he received a Doctor of Law from Cleveland Marshall Law School in 1968.

Prior to joining the bench, in 1984, Judge Futey was nominated by President Reagan and confirmed by the Senate as chairman of the Foreign Claims Settlement Commission (FCSC). As chair of the FCSC, he was part of the management team in the DOJ. The FCSC's monthly meetings included discussion of judicial vacancies and recommendations. In the fall of 1986, Attorney General Ed Meese asked Judge Futey if he would be interested in joining the bench at the Court of Federal Claims; he says, "naturally, I agreed." He later learned that Mayor Ralph Perk, a Republican from Cleveland, had highly recommended him for that position. So in his view, he had "the necessary political connections," but more importantly, he was "in the right place at the right time." When President Reagan nominated Judge Futey to the court in 1987, he had the support of Sen. Howard Metzenbaum, a Democrat from Ohio, so his senate confirmation process went through without delay or difficulty.

Prior to his position at the FCSC, Judge Futey was partner in the law firm of Bazarko, Futey and Oryshkewych from 1975 to 1984; executive assistant to the mayor of Cleveland from 1974 to 1975; chief assistant police prosecutor for the city of Cleveland from 1972 to 1974; and a partner in the law firm of Futey & Rakowsky from 1968 to 1972.

Since 1991, Judge Futey has been actively involved with the democratization and rule of law programs organized by the Judicial Conference of the United States, the Department of State, and USAID in Ukraine. He has participated in judicial exchange programs, seminars, and workshops and has been a consultant to the working group on Ukraine's constitution and parliament. He also served as an official observer during the parliamentary elections in 1994, 1998, 2002, 2006, 2012, and 2015, and presidential elections in 1994, 1999, 2004, 2010, and 2014, and conducted briefings on Ukraine's election law and guidelines for international observers. Judge Futey was an adviser for democracy programs to the International Republican Institute, the International Foundation for Election Systems, and the U.S.-Ukraine Foundation.

Judge Futey is married to Myroslava Fur Futey and has three children: a son, Andrew, and two daughters, Lidia and Daria. He is a member of the District of Columbia Bar Association and the Ukrainian American Bar Association and is admitted to practice in the State of Ohio, the U.S. District Court of Northern Ohio, the District of Columbia, and the Supreme Court.

Judge Futey has presided over numerous notable cases to come out of the Court of Federal Claims, including:

- *Larisey v. United States*.²⁵ This case concerns an alleged taking of a trade secret in violation of the Fifth Amendment and breach of an implied-in-fact contract. The plaintiff was a prisoner in the federal prison system. While incarcerated, he was employed to assist in the manufacturing of Kevlar military helmets. The plaintiff alleged that he invented a jig, which improved the process of cutting Kevlar, and that the defendant committed a taking by making use of his unpatented invention without just compensation. In granting

regarding the savings and loan industry crisis, the court entered a verdict of \$96,798,842 in favor of the plaintiff, one of the largest single verdicts in the history of the court. *Bluebonnet* is also notable for its use of a "jury verdict" concept of damages, a rarity in the Court of Federal Claims, in which the court occupies the position of a jury under like circumstances and exercises its best judgment upon the basis of the evidence presented. This decision was upheld on appeal to the Federal Circuit.

- *Al-Kurdi v. United States*.²⁹ *Al-Kurdi* is a contracts case dealing with the sale of real estate in Jordan. It is a unique case that concerned not only matters of contract law and sovereign immunity,

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the defendant's motion for summary judgment, the court first held that the plaintiff did not have a trade secret with his jig because there was no element of secrecy in developing his device. Next, the court held that there was no implied confidential relationship. On appeal, the court's decision was upheld by an *en banc* decision of the Court of Appeals for the Federal Circuit. The plaintiff had also filed a motion for Judge Futey to recuse himself because of his previous service as a prosecutor in Cleveland. The court denied that motion and was upheld by the Federal Circuit.

- *Turner Construction Co. Inc. v. United States*.²⁶ *Turner* was a bid protest case in which the Army Corps of Engineers required the construction of a military hospital. The intervenor had previously appealed the award of the contract to the Government Accountability Office (GAO) for an alleged organizational conflict of interest (OCI). Although the contracting officer had determined that no OCI existed, the GAO nevertheless recommended that the Army re-procure the contract, excluding the plaintiff. The court overturned GAO, finding that its recommendation of re-procurement was arbitrary and capricious. On appeal, the Federal Circuit affirmed the court's ruling.
- *Rose Acre Farms Inc. v. United States*.²⁷ In *Rose Acre Farms*, Judge Futey found that a regulatory framework established by the USDA effected a taking when it deprived the plaintiff of several million dollars from the loss of chickens, eggs, and hen houses. The court concluded that the economic impact and the plaintiff's investment-backed expectations were significant and therefore the regulations effected an unlawful taking of non-salmonella contaminated eggs. Additionally, the court noted there was a categorical taking as to the collection and slaughter of hens for testing. Overall, the court awarded the plaintiff \$6,165,296 plus interest for its losses.
- *Bluebonnet Savings Bank FSB v. United States*.²⁸ In *Bluebonnet*, one of the many *Winstar*-related cases before the court

but also applying the concept of reciprocity by agreement of two countries permitting lawsuits by foreign citizens against the government. There is always some consideration of foreign law. While the trial was held in Washington, D.C., it could have taken place in Amman, Jordan.

Senior Judge Robert H. Hodges Jr.

Judge Robert H. Hodges Jr. was appointed a judge of the Court of Federal Claims on March 12, 1990. He attended Wofford College in Spartanburg, S.C., graduated from the University of South Carolina with a B.S. in 1966, and received his J.D. from the University of South Carolina Law School in 1969.

Judge Hodges formerly served as legislative aide to Sen. Strom Thurmond, legislative assistant to state Rep. Floyd Spence, vice president and general counsel of First National Bank of South Carolina, and executive vice president and general counsel of South Carolina Bankers Association. He practiced law in Columbia, S.C., before his appointment in 1990.

Senior Judge Loren A. Smith

Judge Loren A. Smith was appointed a judge of the Court of Federal Claims on July 11, 1985, and entered duty on Sept. 12, 1985. He was chief judge from December 1985 to July 2000. Prior to joining the court, he served as the chair of the Administrative Conference of the United States (ACUS) from 1981 to 1985. He also served as general counsel of the 1976 and 1980 Reagan presidential campaigns, as well as assistant special counsel to President Richard Nixon. Judge Smith has taught administrative law, evidence, constitutional law, professional responsibility, conflicts of law, and remedies at six U.S. law schools and lectured at upward of 30 schools both in the United States and around the world. He graduated from Northwestern University, receiving a B.A. in 1966, and he attended Northwestern University School of Law, receiving a J.D. in 1969.

During his tenure as ACUS chair, Judge Smith was a member of the President's Cabinet Councils on Legal Policy and on Management and Administration, and he served as the chairman of the Council of Independent Regulatory Agencies. Judge Smith also served as deputy director of the Executive Branch Management Office of Presidential Transition, 1980-1981; professor of law at Delaware Law School, 1976-1984; special assistant U.S. attorney for the District of Columbia, 1974-1975; assistant to the special counsel to the president, 1973-1974; general attorney at the Federal Communications Commission, 1973; and a consultant at Sidley & Austin, Chicago, 1972-1973. Also in 1972, he served as host of a nightly radio talk show called "What's Best for America?" In 1970, he ran for Illinois General Assembly with the endorsement of the *Chicago Tribune*.

Judge Smith is author of the several articles and publications³⁰ and the co-author of *Black America and Organized Labor: A Fair Deal?* with Wendell W. Gunn.³¹

He is a member of the bars of the Supreme Court of Illinois; U.S. Court of Appeals for the Armed Forces; U.S. Court of Appeals, D.C. Circuit; Supreme Court; U.S. Court of Appeals for the Federal Circuit; and the U.S. Court of Federal Claims. Judge Smith is an honorary member of the Bar Association of the District of Columbia and was the recipient of their Judicial Honoree Award for 1997. He is also an honorary member of the University Club of Washington, D.C., where he serves as chairman of the Centennial Committee. In 1991, he received the Club's Member of the Year Award. Judge Smith is chair of

infringed upon its patent. The court ruled on the government's principle defense based on its interpretation of an Anglo-American 1951 Joint Defense Treaty, rejecting the U.S. interpretation of the treaty and the case subsequently settled for \$6 million when Prime Minister Margaret Thatcher visited President Reagan in the United States. Since being recalled to the court in early 2016, Judge Smith has handled a number of significant cases, including *Worldwide Language Resources LLC v. United States*, a bid protest over the language of the solicitation in a \$9.8 billion army contract.

Senior Judge John P. Wiese

Judge John P. Wiese was appointed a judge of the Court of Federal Claims on Oct. 1, 1982, and entered into office on that same date. He graduated Phi Beta Kappa from Hobart College in 1962 and received his L.L.B. from the University of Virginia School of Law in 1965. He served in the U.S. Army from 1957 to 1959.

Judge Wiese served as a staff law clerk in the trial division of the Court of Claims from 1965 to 1966 and as law clerk to the late Judge Linton M. Collins in the appellate division of the Court of Claims from 1966 to 1967. Thereafter, he engaged in the private practice of law with the firms of Cox, Langford & Brown from 1967 to 1969; and Hudson, Creyke, Koehler & Tacke from 1969 to 1974. From 1974 to 1982, he served on the Court of Claims as a trial commissioner. Upon enactment of the Federal Courts Improvement Act of 1982, Judge Wiese received a "grandfathered" term as a judge on the new court—initially called the U.S. Claims Court—that extended through Oct. 1,

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the WETA Community Advisory Board. At the 1997 National Property Rights Conference, he was presented with The Ronald Reagan Public Service Award. In 1993, Judge Smith was presented with the Presidential Medal by The Catholic University of America.

One of Judge Smith's most significant cases was *Winstar v. United States* where the claims involved a breach of contract by the government related to the savings and loan crisis in the late 1980s. Judge Smith's decision was affirmed by the Federal Circuit *en banc*, 9-2, and the Supreme Court, 7-2. The case ultimately led to the resolution of 130 other cases involving claims of over \$20 billion. Ultimately, payment by the government exceeded \$4 billion. Another significant case, *Whitney Benefits v. United States*, involved a claim by the plaintiffs that the government had deprived them of valuable coal rights by the imposition of environmental regulations. They recovered \$200 million when the government settled the case before appeal. *British Hovercraft v. United States* was a patent infringement claim by the British company and the original inventor of the hovercraft. In this case, the plaintiff claimed that the American army and navy had

infringed upon its patent. The court ruled on the government's principle defense based on its interpretation of an Anglo-American 1951 Joint Defense Treaty, rejecting the U.S. interpretation of the treaty and the case subsequently settled for \$6 million when Prime Minister Margaret Thatcher visited President Reagan in the United States. Since being recalled to the court in early 2016, Judge Smith has handled a number of significant cases, including *Worldwide Language Resources LLC v. United States*, a bid protest over the language of the solicitation in a \$9.8 billion army contract.

As for his time on the court, although he has authored many opinions during his many years of service, he is embarrassed to admit that "most of them are now too vague in memory to be singled out as 'newsworthy.'" One case that he can include in this category is *Casitas Municipal Water District v. United States*, a takings case involving water rights in California. Casitas Municipal Water District operated the Ventura River Project, which was owned by the U.S. Bureau of Reclamation and provided water to residential, industrial, and agricultural customers in Ventura County, Calif. On Jan. 26, 2005, the plaintiff brought suit in the court alleging that, by imposing certain operating criteria on the Ventura River Project, the United States had taken its property without just compensation, in violation of the Fifth Amendment to the Constitution. The court ultimately dismissed Casitas' complaint without prejudice, on the ground that its takings claim was not ripe because Casitas had failed to demon-

strate that the operating criteria had as yet caused it to deliver less water to its customers than it otherwise would have delivered.³² According to Judge Wiese, the eight-year case was “a difficult case conceptually, made all the more so by extraordinary legal advocacy on both sides.”

Judge Wiese is married to Alice Mary Donoghue Wiese and has one son, John Patrick. He is a member of the Bar Association of the District of Columbia. ☺

Endnotes

¹Not to be confused with the popular television show by the same name. “The People’s Court” television show is an arbitration-based reality show presided over by retired Florida State Circuit Court Judge Marilyn Milian while the Court of Federal Claims is a federal court of record rooted in Article I of the Constitution.

²Court History Brochure, *United States Court of Federal Claims: The People’s Court 2*, available at http://www.uscfc.uscourts.gov/sites/default/files/court_info/Court_History_Brochure.pdf (last visited May 15, 2017).

³*Statistical Report for the Fiscal Year October 1, 2015–September 30, 2016* (“2016 Statistical Report”) (provided by the Clerk’s Office). Pursuant to 28 U.S.C. § 791(c), the Clerk of Court transmits this report to Congress every January based on data for the previous fiscal year.

⁴As of May 1, 2017, the court has eight senior judges on recall while nine senior judges were on recall during the 2016 fiscal year.

⁵Court History Brochure, *supra* Note 2, at 2–4.

⁶28 U.S.C. § 1491(a)(1).

⁷Court History Brochure at 4–6. As for bid protest litigation, the Administrative Dispute Resolution Act of 1996 gave the Court of Federal Claims and U.S. District Courts concurrent jurisdiction over post-award protests. However, subsequent legislation in January 2001 provided that the exclusive judicial forum for bid protest litigation would be in the Court of Federal Claims.

⁸42 U.S.C. § 300aa-12(c).

⁹Up to eight special masters may be appointed by a majority vote of the judges of the court. 42 U.S.C. § 300aa-12(c)(1). Unlike the judges who serve 15-year terms, special masters serve four-year terms and may seek reappointment by the court. 42 U.S.C. § 300aa-12(c)(4). The judges then have discretion to grant reappointment by a majority vote. 42 U.S.C. § 300aa-12(c)(1).

¹⁰Vaccine Claims/Office of Special Masters, U.S. Ct. FED. CLAIMS, <http://www.uscfc.uscourts.gov/vaccine-program-readmore> (last visited May 15, 2017).

¹¹28 U.S.C. § 1492 (citing 28 U.S.C. § 2509).

¹²Court History Brochure, *supra* note 2, at 6. The chief judge, currently Susan Braden, is designated by the president.

¹³*Id.*

¹⁴*Id.*

¹⁵28 U.S.C. § 171. Pursuant to 28 U.S.C. § 178(a)(c), a judge may retire prior to completion of the 15-year term based on age, mental, or physical disability. Upon completion of his or her 15-year term, a judge may retire or be appointed to serve another 15-year term upon the advice and consent of the Senate. In certain limited circumstances, a judge may be removed from office for “incompetency, misconduct, neglect of duty, engaging in the practice of law, or physical or mental disability” by the U.S. Court of Appeals for the Federal Circuit. 28 U.S.C. § 176(a).

¹⁶28 U.S.C. § 178(e).

¹⁷28 U.S.C. § 178(a), (e).

¹⁸28 U.S.C. § 178(a), (b).

¹⁹As of May 1, 2017.

²⁰*Zoltek Corp. v. United States*, No. 96-166 C, 2014 WL 1279152 (Fed. Cl. Mar. 31, 2014), *rev’d*, 815 F.3d 1302 (Fed. Cir. 2016).

²¹*Teledyne Inc. v. United States*, 50 Fed. Cl. 155 (2001), *aff’d sub nom. Allegheny Teledyne Inc. v. United States*, 316 F.3d 1366 (Fed. Cir. 2003); *Gen. Elec. Co. v. United States*, 92 Fed. Cl. 798 (2010); *Gen. Motors Corp. v. United States*, 78 Fed. Cl. 336 (2007); *Unisys Corp. v. United States*, 111 Fed. Cl. 191 (2013); *Raytheon Co. v. United States*, 105 Fed. Cl. 236 (2012), *aff’d*, 747 F.3d 1341 (Fed. Cir. 2014).

²²*National Westminster Bank PLC v. United States*, 58 Fed. Cl. 491 (2003), *aff’d*, 512 F.3d 1347 (Fed. Cir. 2008); *McManus v. U.S.*, 130 Fed. Cl. 613 (2017).

²³*National Treas. Emps. Union v. United States*, 54 Fed. Cl. 791 (2002); *King v. United States*, 130 Fed. Cl. 476 (2017).

²⁴*Ideker Farms v. United States*, No. 14-183.

²⁵*Lariscy v. United States*, 20 Cl. Ct. 385 (Cl. Ct. 1990).

²⁶*Turner Constr. Co. Inc. v. United States*, 94 Fed. Cl. 586 (Fed. Cl. 2010).

²⁷*Rose Acre Farms Inc. v. United States*, 53 Fed. Cl. 504 (Fed. Cl. 2002).

²⁸*Bluebonnet Sav. Bank FSB v. United States*, 67 Fed. Cl. 231 (Fed. Cl. 2005).

²⁹*Al-Kurdi v. United States*, 25 Cl. Ct. 599 (Cl. Ct. 1992).

³⁰*See The Morality of Regulation*, 22 WM. & MARY ENVTL. L. POL’Y REV. 507 (1998); *The Aging of Administrative Law: The Administrative Conference Reaches Early Retirement*, 30 ARIZ. ST. L.J. 175 (1998); *Renovation of an Old Court*, FED. BAR NEWS J. (Sept. 1993); *A Spring Thaw in Estonia*, WASH. TIMES (Apr. 11, 1992); *Administration: An Idea Whose Time May Have Passed*, in *THE FETTERED PRESIDENCY* (L. Gordon Crovitz & Jeremy A. Rabkin eds., 1989); *Vision of the Exchange*, 27 WM. & MARY L. REV. 767 (1986); *Judicialization of the Administrative Process: The Fine Print*, NAT’L LEGAL CTR. FOR THE PUB. INTEREST (1986); *The End of the Constitution*, 4 DETROIT COLL. L. REV. 1147 (1986); *Judicialization: The Twilight of Administrative Law*, 85 DUKE L.J. 2 (1985); *Judicial Review of Administrative Decisions*, 7 HARV. J.L. & PUB. POL’Y 61 (1984); *Business, Buck\$ & Bull: The Corporation, the First Amendment & the Corrupt Practice of Law*, 4 DEL. J. CORP. L. 39 (1978).

³¹LOREN A. SMITH & WENDELL W. GUNN, *BLACK AMERICA AND ORGANIZED LABOR: A FAIR DEAL?* (1979).

³²*Casitas Mun. Water Dist. v. United States*, 102 Fed. Cl. 443 (2011), *aff’d*, 703 F.3d 1340 (Fed. Cir. 2013).