

United States Court of Federal Claims

MEMORANDUM

TO: Chief Judge Patricia E. Campbell-Smith,
Chair Sarah L. Wilson, Co-Chair
Meredith Miller, Senior Staff Attorney
Emeritus Leadership Forum, Judge Eric Bruggink, and
Judge Nancy B. Firestone

FROM: Brian Corcoran, Special Master and Chair
Vaccine Committee Members: Daniel Troy, Curtis Webb, Danielle Strait,
Professor Ed Kraus, Professor Betsy Grey, Vincent Matanoski, Andrea Davey,
Francina Segbefia

CC: Chief Special Master Nora Beth Dorsey

RE: Vaccine Committee – Current Projects and Status

DATE: November 19, 2015

Since September, the Vaccine Committee has held one meeting (in late October)¹, with another meeting scheduled for early December 2015. At the end of the summer, the Vaccine Committee met to discuss the recommendations on the Court's use of Alternative Dispute Resolution as it relates to the Vaccine Program. Those recommendations were forwarded to the Advisory Council and were subsequently incorporated in the Vaccine Program practice guidelines.

In the upcoming year, the Vaccine Committee intends to explore, in depth, the problems posed by attorneys' fees and costs disputes. The special masters have observed an increase in disputes between the government and the petitioners' bar over final and interim attorneys' fees and costs applications. This past summer alone, the Office of Special Masters ("OSM") saw multiple disputed fee applications involving the same law firm, the resolution of which required preparation of a lengthy decision, and in turn, caused delays in each of the relevant cases in which the firm had filed a fee application. With OSM experiencing a record number of new case filings in 2015, and with all signs pointing to even more filings ahead, the need to conserve judicial resources is of paramount importance.

The Vaccine Committee's most recent meeting focused on interim attorneys' fees and costs applications, and whether there are practices or procedures that could be employed to streamline the resolution of these disputes. A robust discussion ensued, with members of the petitioners' bar explaining why prompt payment of interim attorneys' fee and costs awards is critical to their participation in the Vaccine Program, while the government's Committee representatives explained their constraints, both practically and from a policy standpoint, in acceding to those requests. Some proposals were made for the standardization of the manner in which interim requests are made (for

¹ Copies of the minutes of this meeting and all other Vaccine Committee meetings are available upon request.

example, by limiting the number of such requests in a case; setting forth dollar limit amounts for interim fee requests; and/or identifying particular points in litigation when an interim request should be considered). Further discussion of the topic will be aimed at evaluating whether such practices are better employed on an *ad hoc* basis by the special masters, or if the requests should be more formally imposed, either by inclusion in the Vaccine Guidelines for Practice or elsewhere.

In the months ahead, the Vaccine Committee intends to address other issues relating to attorneys' fees and costs requests – including (a) problems posed by disputes over an attorney's hourly rate; (b) the timing of the payment of expert-related costs; and (c) the degree of scrutiny that fees applications generally should receive, especially in light of the burdens that OSM faces in the management and resolution of its ever-increasing docket of cases. We expect to generate action items and recommendations as a result of the exploration of this topic.