



# FEDERAL CLAIMS BAR ASSOCIATION

Fall 2010 Newsletter

## Letter from the Honorable Emily C. Hewitt, Chief Judge



Members of the United States Court of Federal Claims Bar Association, greetings, and, from the point of view of the court year, Happy New Year! August and September brought the arrival of the court's new roster of law clerks and the start of the new year for our returning clerks.

The "Welcome Breakfast" on September 15, sponsored by the CFC Bar Association, gave our incoming clerks an opportunity to meet judges and clerks from other chambers, members of the court's administrative staff and Bar Association leaders, all while enjoying a delicious breakfast buffet.

**Steve Hollman**, as president of the CFC Bar Association, delivered welcoming remarks to the clerks. Steve was encouraging to our clerks as they begin (or continue) their careers while at the same time forthright in acknowledging that the legal employment and economic landscape that today's new lawyers will navigate is significantly more challenging than the landscape in which he began his career.

This is also a new year at the Office of the Clerk of Court. **Lisa Reyes**, Chief Deputy Clerk for Operations, returns to court after maternity leave,

now carrying out the additional role of mother to son **Evan Charles Reyes**, born June 2, 2010.

The court's Judicial Conference, sponsored by the CFC Bar Association, will be underway or in the very recent past when you read this. The theme, "Jurisdiction and Appellate Review: Emerging Law" features substantial sessions on jurisdiction and record review and two ethics panels, one on the challenges of managing electronic information and a second panel on compliance with Rule 83.2 of the 2009 Amendments to the Rules of the Court of Federal Claims, revising the court's prior rules on attorney discipline. In keeping with the theme of Appellate Review, the conference will conclude with a reception at the United States Supreme Court hosted by **Justice Clarence Thomas**. I will chair a concluding conference panel at the Court featuring remarks by the leaders of three civil litigating divisions of the Department of Justice: **John DiCicco**, Acting Assistant Attorney General for the Tax Division, **Ignacia Moreno**, Assistant Attorney General for the Division of Environment and Natural

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Resources, and **Tony West**, Assistant Attorney General for the Civil Division.

After the Judicial Conference, we at the court look forward to the regular educational presentations sponsored by the CFC Bar Association.

We are also looking forward to Law Day 2011. The CFC Bar Association is the key sponsor of this signature event in the court year. Law Day, observed since the 1950s in May, addresses a different person or theme in the law each year. The topic of Law Day 2011 is "The Legacy of John Adams: From Boston to Guantanamo." Our speaker this year will be **Daniel R. Coquillette, Esq.**, J. Donald Monan, S.J., University Professor at Boston College Law School and Charles Warren Visiting Professor of American Legal History at Harvard Law School. Professor Coquillette will speak on the topic "The Boston Massacre Trial," a perfect fit within this year's Law Day theme. The Law Day luncheon for 2011 will be held at noon on Tuesday, May 10, 2011 at the Willard Hotel in Washington. Tickets will be available through the CFC Bar Association later this year.

Two cases being heard by the United States Supreme Court this fall address aspects of the jurisdiction of the Court of Federal Claims. *Bruesewitz v. Wyeth, Inc.*, No. 09-152, argued on October 12, 2010, examines the extent to which the National Vaccine Injury Compensation Act preempts certain civil tort suits. *United States v. Tohono O'odham Nation*, No. 09-846, scheduled for argument on November 1, 2010, examines the scope of 28 U.S.C. § 1500, as a bar to the filing of certain suits in the Court of Federal Claims.

Please also note: to allow court staff to travel and to spend time with friends and family during the winter holidays, the court will be officially closed on Friday, November 26, 2010. The court will also be closed for national holidays on Veterans Day, Thursday, November 11, 2010, Thanksgiving Day, Thursday, November 25, 2010, and on Friday, December 24, 2010 and Friday, December 31, 2010.

With all best wishes,  
Chief Judge Hewitt.

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## President's message



The governing board of the Court of Federal Claims Bar Association meets on a monthly basis to attend to the regular administration of the Association. We try to ensure that membership is robust, that the finances of the Association are

well-tended, and that our programs offer good opportunities for our members to learn about developments in the law while interacting with the bench and with our counterparts on the other side of the public/private bar aisle. But while our energies are consumed by our day-to-day administrative responsibilities, we sometimes miss the opportunity to take the longer view. The Board of Governors met for an afternoon in August to address this imbalance and to think creatively and strategically about what our longer-term objectives should be.

In view of the 5,000 or so attorneys admitted to practice before the Court of Federal Claims, should we be seeking to expand our 400-500 lawyer membership base, or simply ensure that we are engaging non-members within the Court community? Given that we are in a strong financial position, how can we best use our financial resources to further our mission of education, training and service to the Court? How can we engage law students and young practitioners? What is the best way to develop future leaders of the Bar Association? What can we do to create more opportunities for Association members and the bench informally to interact and socialize? What is the best way to ensure that our events are fun? These are some of the questions we grappled with at our Strategic Planning Session. To keep the momentum from this meeting going, I am appointing a Committee of Past-Presidents to assist in long-term strategic planning for the Bar Association. We welcome your input in this process. I also wish to give a special thanks to the Past-Presidents who joined us in the discussion and also to **Jim Brookshire**, the Executive Director of the Federal Circuit Bar Association, whose institutional knowledge and unique perspective always make for a helpful contribution to the discussion.

And while I am giving thanks, there are quite a number of people whose service to the Bar Association has made a unique and distinctive difference in what we are able to accomplish for the Court community. Foremost among these, of course, is **Chief Judge Emily C. Hewitt**, who has worked to ensure that the close working relationship between the Court and the Bar Association continues. We are most grateful for the opportunity to have participated in planning for the upcoming Judicial Conference, hosting the Law Day celebration, welcoming new judicial clerks, appearing for monthly bar admission ceremonies and joining in some of the Court's special observances, like the unveiling of Judge Damich portrait or the new photograph of the Judges of the Court.

A special thanks to **Judge Nancy Firestone** for her indefatigable efforts to bring education, illuminating programming and collegiality between bench and bar to the Court community through her work on the annual Judicial Conference. That work will be evident this week at the 23<sup>rd</sup> Judicial Conference to be held at the National Courts Building, which will feature, among other instructive panel discussions, programs on the jurisdiction of the Court of Federal Claims addressing issues raised in two cases presently pending before the Supreme Court. The first is *United States v. Tohono O'odham Nation*, No. 09-846 (cert. granted Apr. 19, 2010), testing whether 28 U.S.C. § 1500 deprives the CFC of jurisdiction over a claim by Native Americans seeking monetary relief for mismanagement of tribal funds where the plaintiff has another suit pending in federal court based on substantially the same operative facts but seeking different relief. That case is set for argument on November 1, 2010. The second case is *Bruesewitz v. Wyeth*, No. 09-152 (cert. granted Mar. 8, 2010), a Vaccine Act case testing whether the National Childhood Vaccine Injury Act preempts civil tort suits in state court or permits state court juries to decide on a case-by-case basis whether a safer vaccine was available. That case was argued before the Supreme Court on October 12, 2010.

In addition to members of the bench, the Court staff has been extraordinarily generous in sharing time with the Bar Association. Most particularly, **Clerk of Court Hazel C. Keahy** has made a special effort to attend our meetings and to give us a window into what is happening in the Clerk's Office.

And anyone who has worked closely with the Bar Association knows that the hands of **Chief Deputy Clerk Carole D. Bailey** touch nearly everything we do. She is truly invaluable.

**John Buckley** from Judge Damich's staff and **Kenneth Dintzer**, an Assistant Director of the National Courts Section at the Department of Justice, have helped with our Brown Bag lunch program this year, and we are grateful for their assistance.

**Mary Abate** has been tireless in her efforts to keep the Bar updated on case developments as Editor-in-Chief of our *Inside 717* publication, and **Franklin White** has brought us interesting and informative news and profiles as Editor-in-Chief of our *Newsletter*.

Our recent Writing Competition, designed to encourage J.D. candidates in scholarship on current topics within the jurisdiction of the Court of Federal Claims, was devised and promoted by our immediate past president, **Melonie McCall**, and our president-elect, **Bryant Snee**, and they have done a wonderful job.

The health of the Association's fisc is due in no small part to the careful management of our irreplaceable treasurer, **Lewis Wiener** of the Sutherland law firm. And the Association's secretary, **Rob Stewart**, from the Tax Division of DOJ, has faithfully recorded our proceedings with and agile wit and good humor.

We are grateful as well to our outgoing Board members: **Tom Cullinan**, **Franklin White** and **Jennifer Spriggs** for their years of service to the Association.

All of our day-to-day administration is overseen by our Executive Administrator **Sandy LoJacono**, whose smiling face graces nearly every Bar Association event. We are most grateful for her continued assistance.

Finally, please accept my personal thanks to you, our members, for the opportunity to have been of service during my term as President.

Steven P. Hollman, President  
U.S. Court of Federal Claims Bar Association

**Membership Has Its Benefits**

## **REPORT OF THE NOMINATIONS COMMITTEE**

## **Court Of Federal Claims Bar Association Law Student Writing Competition 2010**

The Nominations Committee met on October 6, 2010 to consider officers and directors of the Bar Association for the coming year. **Past President Melonie McCall** convened the meeting, which also was attended by **President-Elect Bryant Snee**, **current President Steven Hollman**, **Lewis Wiener** of Sutherland Asbill & Brennan, **Richard Rector** of DLA Piper. Committee member **Brad Fagg** of Morgan Lewis was unavailable to attend.

The Committee nominated the following slate of officers:

President-Elect:	<b>Luke Levasseur</b> , Mayer Brown LLP
Treasurer:	<b>Lewis Wiener</b> , Sutherland Asbill & Brennan LLP <sup>1</sup>
Secretary:	<b>G. Rob Stewart</b> , Tax Division, U.S. DOJ

To fill the expiring terms of **Governors Luke Levasseur**, **Tom Cullinan** (Sutherland/Tax), **Jennifer Spriggs** (DOJ/Tax), and **Franklin White** (DOJ/Civil), the Committee nominated the following to the Board of Governors, each for a 3-year term:

**Sarah Wilson**, Covington & Burling LLP  
**Don Grove**, Nordhaus Law Firm, LLP  
**John Fargo**, Civil Division, U.S. DOJ  
**Voris Johnson**, Civil Division, U.S. DOJ

Pursuant to the Bar Association's Bylaws, **Bryant Snee**, the 2010 President-Elect, automatically succeeds to the position of President on January 1, 2011, and the current President serves as Immediate Past President.

The Board of Directors approved the Nominations Committee's Report and nominees at its regular meeting on October 12, 2010. The nominees will be presented to the Bar Association's membership at its meeting on October 27th.

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<sup>1</sup> Mr. Wiener did not participate in the deliberations regarding the nominations for the office of Treasurer.

The U.S. Court of Federal Claims Bar Association announces its 2010 Law Student Writing Competition. The Court of Federal Claims Bar Association (CFCBA) is a voluntary bar association made up of nationwide members who practice law in the areas that lie within the specialized jurisdiction of the U.S. Court of Federal Claims. The goal of this competition is to promote education about the U.S. Court of Federal Claims and its distinctive role in American jurisprudence, and to encourage law student scholarship on current topics that lie within its jurisdiction.

The United States Court of Federal Claims, which hears claims against the United States, has existed in its current and predecessor forms for more than 150 years. The current court was created pursuant to Article I of the United States Constitution in October 1982. Its predecessor, the United States Claims Court, was created in 1855 when Congress established a court to hear private suits against the sovereign. The U.S. Court of Federal Claims is authorized to hear primarily money claims founded upon the Constitution, federal statutes, executive regulations, or contracts, express or implied-in-fact, with the United States.

The cases before the Court are diverse. They include tax refund suits, government contracts, Fifth Amendment takings - which raise environmental and natural resource issues, civilian and military pay, intellectual property - including use by the government or its contractors of technology protected by patents or copyrights, Indian tribe, and Vaccine Injury Compensation matters.

Entries to the contest may discuss any topic that lies within the procedure, substance, or scope of the jurisdiction of the U.S. Court of Federal Claims. The rules of the contest appear below.

### **COMPETITION RULES**

**Eligibility:** Any law student in good standing currently enrolled at an ABA accredited law school may enter the competition. Students are permitted and encouraged to use papers that they prepared

for law school courses and seminars during the Spring and Fall 2010 school semesters as their entries.

**Deadline:** Entries must be received by **FRIDAY, JANUARY 14, 2011.**

**Prize(s):** One cash prize of **One Thousand Five Hundred Dollars (\$1,500)** will be awarded to the entry deemed by the judges to be the best. In their discretion, the judges may award a second cash prize of a lesser amount to the entry deemed second best. The winner(s) will receive significant favorable publicity to the U.S. Court of Federal Claims and the members of the Court of Federal Claims Bar Association. It is anticipated that the winning entry or entries will be published on the U.S. Court of Federal Claims website and on the website of the CFCBA. In addition, the CFCBA may explore other publication opportunities. For example, the paper selected as the 2009 winner has been accepted for publication in the Federal Circuit Bar Journal.

The winner(s) will be announced as soon as they are determined, but no later than March 14, 2011. The winner(s) will also be recognized at the annual Law Day Celebration hosted by the Court of Federal Claims in May 2011.

**Submissions:**

1. Submission of a paper in accord with these rules constitutes registration. Pre-registration is not necessary.
2. All papers should be prepared during the Spring or Fall 2010 academic semesters. Papers shall be the sole work product of the student. Normal comment and guidance by law school faculty is permitted.
3. Papers must address a topic that lies within the substance, procedure, or scope of the specialized jurisdiction of the U.S. Court of Federal Claims.
4. Papers will be judged by selected members of the CFCBA. The papers will be judged generally on their substance, clarity, timeliness, and quality of argument. However, details of form will not be ignored.
5. Papers will be judged anonymously. The

entrant's name and school should not appear on the paper. (See instructions below.) Students shall inform the CFCBA of any change in contact information prior to the announcement of a winner. Only one entry per student is allowed.

6. Papers should be approximately 25 pages in length. Papers shall not exceed 30 pages, including footnotes. Papers must be typed in 12 point typeface (both text and footnotes), double-spaced, on 8 ½ x 11 inch paper. Footnotes may be single spaced. All citations and footnotes should be in accord with the current edition of The Bluebook: A Uniform System of Citation.

7. Submissions must be sent by email to the CFCBA at sandy@cfcbar.org no later than 11:59 p.m., January 14, 2011. Questions should be directed to the same address.

**Instructions** for making a submission:

- a. Address the subject line of the email as "2010 Law Student Writing Competition."
- b. Attach the email as a PDF document.
- c. Do not include your name or the name of your law school within the paper. However, within your email include:
  - i. Your name;
  - ii. Your contact information, including your email address, mailing address, and telephone number;
  - iii. Your year in law school;
  - iv. Certification that you are a student in good standing and identification of the law school you are currently attending;
  - v. Explanation of when and why you prepared the submission, e.g., for a law school course;
  - vi. Permission for the CFCBA and the U.S. Court of Federal Claims to publish the paper on their websites and for the CFCBA to circulate the paper to its members

d. Each submission should include a title, which shall appear on the first page of the submission. No separate title page should be sent.

8. The CFCBA reserves the right to screen entries and to limit the number of papers submitted to the judges for final decision. The CFCBA will confirm receipt of submissions within 10 business days.

9. Submissions will not be returned to authors. Submission of a paper grants the CFCBA the right to publish the paper on its website and in its newsletter. Previously published (and papers previously accepted for publication, but not yet published) will not be accepted. Failure of the student to preserve this grant may result in disqualification. Receipt of a CFCBA award and publication by the CFCBA on its website and in its newsletter does not preclude later publication elsewhere.

10. The CFCBA reserves the right to award only one prize or no prize, should there not be sufficient entries that, in the discretion of the CFCBA, merit an award.

**To Join The Court Of Federal Claims Bar Association, Click On "Membership" At [www.cfcbar.org](http://www.cfcbar.org)**



***On-Line CM/ECF Attorney Training Now Available (Update)***

Pursuant to the success of the initial on-line training session, the Clerk's Office will now offer on-line introductory CM/ECF training for attorneys and their staff. Training will be offered monthly. The sessions will be held at 2:00 p.m. on the third Tuesday of each month with the next session being held on November 16, 2010 at 2:00 p.m. You must register for each session if you would like to attend. To register for the next training session go to:

<https://uscourts.webex.com/uscourts/k2/j.php?ED=146081552&UID=1168135527&RT=MIMxMQ%3D%3D&FM=1> and register. Once you are approved by the host, you will receive a confirmation email with instructions for joining the session. If you have any questions or concerns please contact Mark Busby at 202-357-6423 or at [mark\\_busby@ao.uscourts.gov](mailto:mark_busby@ao.uscourts.gov).



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