



U.S. COURT OF FEDERAL CLAIMS BAR ASSOCIATION



E-Newsletter

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Dear Member,

We hope you enjoy our E-Newsletter. If you have any questions or comments or would like to submit an article for the newsletter, please email newsletter@cfcbbar.org.

Need to join or renew your membership in the bar association? [Click here](#).

In This Issue

Letter from the Chief Judge
 President's Message
 Ask the Judge!
 2018 Randolph Thrower Award
 Join Us for YLD Happy Hour!
 Brown Bag Program on Expert Use in the Vaccine Program
 Find Us On Facebook

Letter from the Chief Judge



*Chief Judge
Margaret M. Sweeney*

Greetings, members of the United States Court of Federal Claims Bar Association.

First and foremost, I would like to extend my deep appreciation to you for all of the exceptional work you did to make 2018 such an outstanding year for the court and the bar. The 29th Annual Judicial Conference was a huge success, thanks in no small part to your support and assistance. I am equally grateful for all of the other wonderful events you sponsored this year--the court and bar benefited greatly from the brown bag lunches, panels, and happy hours you arranged.

I have no doubt that 2019 will be another banner year for the Bar Association. I look forward to your continued programming, as well as to the 30th Annual Judicial Conference, which I anticipate will occur during the first two weeks of November.

I am also happy to announce that the court will be upgrading its Case Management/Electronic Case Filing system (CM/ECF) to the Next Generation of CM/ECF (NextGen) later this year. This upgrade will provide users with several benefits including Central Sign-On: the ability for e-filing attorneys to access any NextGen court in which they practice using one login and password. More information, including what you can do to prepare for the transition, can be found on the court's website.

Once again, thank you for your continued commitment to and interest in the United States Court of Federal Claims.

Margaret M. Sweeney
Chief Judge

President's Message



James Connor

It is truly an honor to serve as the 32nd President of this Bar Association. Already a growing and vibrant Association, we have much in store for 2019. Among other things, we plan to bring together our members in new and exciting ways to serve the Court and the public, including through further outreach to local law schools and law students - our future members! And we have recent success to build on: the November 2018 judicial conference provided a fine example of all our Court and Bar Association has to offer. Panels

on national security, bid protests, tax, and rails-to-trails takings cases (all of which you can view [here](#)) provided unique insight into the the extensive reach of the Court's jurisdiction. And the reception that followed at the Hay-Adams hotel allowed the bench and bar to come together to socialize, renew our shared bonds, and get to know one another outside the context of litigation.

One of our main goals for this year - and this is where you come in - is to increase engagement with our existing members. We have many active members, but we also have members who have not yet utilized all the benefits of the Bar Association. We host brown-bag luncheon educational programs, which our members present and attend. We publish [Inside 717](#) (named after the address of the Court, 717 Madison Place), a quarterly publication reporting on significant rulings in all major areas of the Court's jurisdiction. We also publish this newsletter! We hope that you will consider serving on a brown-bag luncheon panel, writing a summary of one of your recent cases for Inside 717, contributing a short article to the newsletter, or even reaching out to us to tell us you are interested in becoming more involved.

One of the stated purposes of our Bar Association, directly from our [Articles of Incorporation](#), is to "preserve and promulgate the heritage and tradition" of the Court. By involving more of our members in all the Bar Association has to offer - and utilizing each member's unique experiences and talents - we can work together to continue to achieve this important purpose.

Best regards,

James Connor
President, Court of Federal Claims Bar Association

Ask the Judge!



Judge

We hope you enjoy the latest in our series, "Ask the Judge," which we hope will provide interesting insights from Court of Federal Claims judges on a variety of topics. Thank you to Judge Thomas C. Wheeler for serving as the latest participant in this series!

1. Since you were appointed to the Court in October 2005, have you noticed any changes in the Court's practice or the types of cases the Court decides?

Judge Wheeler: In addition to the usual areas of our Court's jurisdiction, there always seem to be special categories of cases that arise because of some national event or crisis. Examples are *Winstar* banking cases, spent nuclear fuel cases, and Affordable Care Act cases. We also had some large multi-billion

Thomas C. Wheeler dollar cases arising from the Government's 2008 bailout of AIG, the auto manufacturers, and Fannie Mae/Freddie Mac. The eclectic jurisdiction of our Court always keeps our docket lively and interesting.

2. *What judge, living or dead, do you most admire, and why?*

Judge Wheeler: I had this same question during my interview with White House Counsel in 2005 when I was being considered for a Court of Federal Claims judgeship. My answer today is the same as it was in 2005--Justice Antonin Scalia. Justice Scalia was a wonderful and clear writer who was never afraid to speak his mind. A close runner-up is former Chief Judge Albert V. Bryan of the Rocket-Docket in Alexandria. During a civil trial before Judge Bryan involving money damages, Judge Bryan took a break for a criminal sentencing. After the break, he said to all of us, "That gentleman I just sentenced had way more at stake than you do. Your case is just about money." From our own Court, I would pick my good friend, the late George W. Miller, who would often say at the end of lunch, "Go forth and dispense justice, but don't get carried away." Judge Miller was a brilliant but quiet person. I miss him dearly.

3. *How important is it that judicial opinions be easily understandable by non-lawyers?*

Judge Wheeler: Most of our decisions are read by non-lawyers as well as lawyers. It is important that company management be able to understand the high-stakes opinions on cases we decide. To this end, my law clerks will tell you that I have a few simple rules in chambers: (1) Do not use any Latin phrases; (2) Always use the active voice instead of the passive voice, and if you don't know the difference, we need to talk; and (3) Avoid imprecise words like "several," and "numerous," which really don't mean anything. Tell me the number instead. I like to include an Executive Summary at the beginning of a decision so the reader can decide if he/she wants to proceed further. I also favor shorter decisions that are crisp and to the point.

4. *What distinguishes an effective brief from one that is not and what percentage of briefs do you find to be especially helpful and well-written?*

Judge Wheeler: As with my decisions, I favor brevity in briefs. I do not like string cites. Instead, give me your best case law precedent. One of the best "briefs" I ever received was only 1-1/2 pages. It took courage for a lawyer to submit such a short brief, but really, he knew exactly what he needed. Most of the lawyers who appear in our Court do a nice job with their briefs.

5. *Before you became a judge, you worked in private practice. What did you enjoy most about private practice and what do you miss the most?*

Judge Wheeler: When I first started practicing in 1973 and 1974, I was part of a close-knit six lawyer office. Our office leader, Dave Anthony, taught me how to try cases. Dave learned through his years at the Department of Justice, and later in trying the big shipbuilding cases of the 1970's. I actually had a jury trial in 1975, only two years out of law school, in the Federal District Court in Richmond. Those early years were the best. In 1995, our office merged with Piper & Marbury, a mid-Atlantic power based in Baltimore. Gradually, through other mergers, we became DLA Piper, one of the largest firms on the planet. Looking back, I preferred smaller instead of larger, because we were a true law firm. I remember a partnership retreat when we were at our largest and the partners had to wear name tags. To me, that entity was no longer a law firm, but a business, pure and simple.

6. *Other than briefs and legal-related material, what are you reading right now?*

Judge Wheeler: I just finished an entertaining book recommended by our Church Book Club called *Eleanor Oliphant is Completely Fine* by Gail Honeyman. Right now, I am reading *Gettysburg Eddie*, a story about Hall of Fame pitcher Eddie Plank in the early 1900's. This book is not particularly well written, but is full of baseball lore. Plank grew up in Gettysburg, PA, and Gettysburg College has a building called Eddie Plank Gymnasium in his honor. The best books I have read recently are the Ken Follett Trilogy of *The Fall of Giants*, *Winter of the World*, and *Edge of Eternity*. Ken Follett is just the best.

7. *What advice would you give to young lawyers who aspire to judicial office?*

Judge Wheeler: I don't know too many people who actually "aspire to judicial office." In my own case, I reached a point where I felt I had accumulated enough relevant experience that I could do a good job as a judge. I only wanted to be on the Court of Federal Claims - nothing else. But I think a broad range of in-court experience is the most important asset to have. Also, you need to candidly assess whether you have a suitable judicial temperament. Not everyone has it.

8. *You graduated from Gettysburg College, in Gettysburg, Pennsylvania. Can you share any less well-known facts about the Battle of Gettysburg?*

Judge Wheeler: Pickett's Charge was a very bad idea. When you visit the battlefield, be sure to go to the location where Pickett's charge began, and see what General Pickett saw—an unimposing straight shot across a field to Little Round Top. As you get closer to Little Round Top, however, you will see that the Union troops at Little Round Top were looking down, like shooting fish in a barrel. Big mistake. A little known piece of the battlefield is Spangler's Spring. This area is privately owned, and thus ideal for college students looking for a Friday afternoon happy hour location. I was there a few times.

9. *What is your prediction for where Bryce Harper will play baseball next year [ed. note: Judge Wheeler answered this question before Bryce Harper signed with the Phillies for \$330 million over 13 years.]?*

Judge Wheeler: I am a huge baseball fan, and I pull for the Nats except when the Chicago Cubs are in town. Growing up in Chicago, I have been to Wrigley Field hundreds of times. The Cubs' 2016 World Series championship is something I wasn't sure I would ever see in my lifetime. I stayed up late for every playoff game (except one) in 2016. As for Bryce Harper, he seems not to be the consummate team player, but of course he could change. The leader right now to sign him seems to be the Phillies, but that is just a guess. If the Phillies sign him, they will not have enough funds to fill out the rest of their team, and we may never hear from the Phillies again. The same is true for any team that would pay Harper \$300+ million for ten years. You can forget San Diego for the same reason, having just paid \$300 million to Manny Machado, because he too is not a one-man team.

10. *What are your favorite lunch destinations near the Court of Federal Claims?*

Judge Wheeler: My favorite DC restaurant, although not particularly close to the Court, is Rasika in Penn Quarter, with its cousin, Rasika West End, at 21st and M Street being a favorite as well. Closer to the Court, I like Café Mozart's German Deli, Siroc on 15th Street, and Woodward Table across the street. Bobby Van's is quite reliable too. And, as some of my colleagues will tell you, the Oval Room is pretty special. My list of 30 favorite DC restaurants is proprietary information.

2018 Randolph W. Thrower Award



L-R: Mary Abate, Rob Stewart, and Ed Passarelli

The 2018 Randolph W. Thrower Award, which is presented annually by the Court of Federal Claims Bar Association to an individual who provided "exceptional service to the Bar," was awarded on November 14, 2018 at the Court's annual judicial conference to Edward J. Passarelli, Deputy Chief of the Natural Resources Section in the Environmental and Natural Resources Division, Department of Justice. Ed was recognized for his tremendous dedication to the Bar Association and his record of achievement, including serving as the Bar Association's President twice, first in 1995, then again in 2017.

The award is named for the first president of the Bar Association, Randolph Thrower, who passed away in 2014 at the age of 100. A fascinating read on his storied legal career can be found [here](#), and includes an account of Thrower's resignation as Commissioner of the Internal Revenue Service during the Nixon Administration in 1971, years before Randolph Thrower became our first Bar Association president in 1987.

Congratulations, Ed!

Join Us for YLD Happy Hour!

It's
HAPPY HOUR

COME  JOIN US

The Young Lawyers Division of the Court of Federal Claims Bar Association is hosting a happy hour on **Thursday, March 14, 2019 at 5:30pm - 7:30pm at Mazi Restaurant, 1518 K Street, NW**. Light food and drink tickets will be provided on a first come first served basis.

This event is open to all CFC Bar Association members, who are encouraged to bring along prospective members. We hope to see you there!

[click here to register](#)

Brown Bag Lunch Program on Expert Use in the Vaccine Program

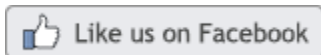


Please join us for the latest in our series of brown bag luncheon programs, "Tips for Practitioners in Utilizing Expert Witnesses in the Vaccine Program." Our excellent panel will include (1) Chief Special Master of the United States Court of Federal Claims, Nora Beth Dorsey; (2) Catherine Reeves, Deputy Director of the Constitutional and Specialized Torts Branch at the Department of Justice; and (3) Renee Gentry, partner with Shoemaker, Gentry & Knickelbein and Co-Director of the Vaccine Injury Litigation Clinic. Moderating will be Altom M. Maglio, partner with Maglio, Christopher & Toale, and Colleen C. Hartley, a Trial Attorney in the Constitutional and Specialized Torts Branch at the Department of Justice.

The program will be held on Wednesday, April 17, 2019, from 1:00pm until 2:30pm at the offices of the Federal Circuit Bar Association, 1620 I Street, NW, Suite 801, Washington, DC 20006. Registration details will follow shortly. Hope to see you there!

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The Bar Association has a Facebook page where we will post the latest news, events and other important information. Click on the link below and when you get to our page click "Like" so you can stay informed.



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